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REPORT OF THE SENATE IMPEACHMENT TRIAL COMMITTEE ON THE ARTICLES AGAINST JUDGE ALCEE L. HASTINGS

HEARINGS

BEFORE THE

SENATE IMPEACHMENT TRIAL COMMITTEE
UNITED STATES SENATE

ONE HUNDRED FIRST SESSION

FIRST SESSION

ON

THE ARTICLES OF IMPEACHMENT AGAINST JUDGE ALCEE L. HASTINGS, A JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, FOR HIGH CRIMES AND MISDEMEANORS

MISCELLANEOUS MATERIAL RELATED TO THE EVIDENTIARY HEARINGS

Part 2A of 3 Parts

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IMPEACHMENT OF JUDGE ALCEE L. HASTINGS

MONDAY, JULY 10, 1989

U.S. SENATE,
IMPEACHMENT TRIAL COMMITTEE,
Washington, DC.

The committee met, pursuant to notice, at 9:35 a.m., in Room SH-216, Hart Senate Office Building, Hon. Jeff Bingaman, chairman of the committee, presiding.

Present: Senators Bingaman, Specter, Leahy, Durenberger, Pryor, Rudman, Bryan, Bond, Kerrey, Gorton, Lieberman, and Burns.

Counsel present: Terence J. Anderson, counsel for Judge Hastings; Patricia Graham Williams, counsel for Judge Hastings; Robert S. Katz, counsel for Judge Hastings; Alan I. Baron, special counsel, House Impeachment Committee; Janice E. Cooper, Patricia Wynn, and Lori E. Fields, assistant special counsel, House Impeachment Committee; Michael Davidson, Senate Legal Counsel; Elaine Stone, counsel, Senate Impeachment Trial Committee; Mark Klugheit, counsel, Senate Impeachment Trial Committee; and Bruce McBarnett, Senate Impeachment Trial Committee.

Staff present: Anthony Harvey, Administrator, Senate Impeachment Trial Committee; P. Casey McGannon, staff assistant, Senate Impeachment Trial Committee; and Isabel McVeigh, staff assistant, Senate Impeachment Trial Committee.

INTRODUCTORY STATEMENT BY THE CHAIRMAN

The CHAIRMAN. The evidentiary proceedings of the Senate Impeachment Trial Committee on the Articles of Impeachment against Judge Hastings, Judge Alcee L. Hastings, are now in session.

By Senate Resolution 38, this committee was, on March 16th of this year, appointed to perform the duties and to exercise the powers provided for in Rule 11 of the Rules of Procedure and Practice in the Senate when Sitting on Impeachment Trials. Rule 11 requires this committee to receive evidence and to take testimony on the Articles of impeachment.

After extensive pretrial proceedings, we are here today to begin the receiving of evidence and the taking of testimony. At the conclusion of these trial proceedings, the committee shall, as mandated by Rule 11 and by Senate Resolution 38, report to the full Senate, in writing, both a certified copy of the transcript of the proceedings and testimony had and given before this committee, and, in addition, a statement of facts that are uncontested and a summary of the evidence that the parties have introduced on contested issues of fact.

The proceedings may be viewed in each Senate office on television, a videotape of the testimony will be made so that each Senator who is not on the committee may have an opportunity at any time to view the testimony of witnesses, in addition to reading the transcripts of their testimony.

Under Senate Impeachment Rule 11, the full Senate retains the power to determine the competency, relevancy and materiality of any of the evidence that the committee will report to it. The Senate also retains the power to send for any witness to testify in open Senate or, indeed, to order that the entire trial be conducted again in open Senate.

We are now prepared to proceed with the parties' opening statements. Each party has been allocated an hour for its opening statement. As the Articles of impeachment present two separate sets of issues, one concerning the House's allegations of bribery and false statements against Judge Hastings, and another concerning an alleged disclosure of confidential wiretap information, the parties have been given permission to divide their openings into two parts. This will enable them to give a portion of their openings at a later point in the proceedings.

We will begin with Representative John Bryant, for the House managers. Would you wish to take your full hour of opening statement at this point, or reserve part of it?

Mr. Bryant. It is our request to allow us to divide our time, in order that we might present another opening statement with regard to the allegations in Article XVI.

The Chairman. So, how much time would you like to take at this time?

Mr. Bryant. Approximately 40 minutes, reserving any time within that allocation of time which I do not use.

The Chairman. All right, why don't you proceed with your opening statement.

OPENING STATEMENT ON BEHALF OF THE HOUSE MANAGERS

Mr. Bryant. Mr. Chairman and Mr. Co-Chairman, I am John Bryant, a member of the House from Texas, and the lead manager in the presentation of Articles of impeachment by the House with regard to the respondent, Judge Alcee Hastings. I will be joined in the presentation of the Articles by my colleagues, Representative John Conyers of Michigan, who was chairman of the Subcommittee on Criminal Justice during the 100th Congress, which had principal and primary jurisdiction over the matter of the impeachment of Judge Alcee Hastings; Representative George Gekas, the ranking minority member of that subcommittee; Representative Hamilton Fish, the ranking minority member of the full Judiciary Committee; Congressman Mike Synar of Oklahoma, also a member of the Subcommittee on Criminal Justice; and Alan Baron, special counsel to the House impeachment inquiry.

Mr. Chairman and members of the committee, on Friday, October 9, 1981, United States District Judge Alcee Hastings, of Miami, Florida, arrived at Washington National Airport, and there he was met by a prominent Washington, DC, attorney and personal friend of 16 years, a man named William Borders.

Borders took Judge Hastings to the L'Enfant Plaza Hotel, where the two of them checked into a suite with adjoining rooms, and then, after a few intermediate stops, they went to the law offices of William Borders and found there a message waiting for Mr. Borders, and it was a message from "Frank," who Borders knew to be a man named Frank Romano, a defendant in a criminal case pending before Judge Hastings. In fact, it was a call from an FBI undercover agent who, for four weeks, had been posing as Frank Romano, and who had already paid $25,000 down on a $150,000 bribe for favorable treatment by Judge Hastings in his case.

Frank told Borders, "I have all the necessary papers," and Borders, knowing what that meant, arranged to meet him at his hotel to collect the balance due. And while Borders went to collect the money at the hotel of the undercover agent, Judge Hastings went back to his hotel room at the L'Enfant Plaza.

At 1:00 p.m., William Borders was arrested by the Federal Bureau of Investigation, in possession of the $125,000 in cash he had just received from the agent posing as the defendant in Judge Hastings' court. Around 3:00 p.m., Judge Hastings was informed that Borders had been arrested, was told that the arrest had something to do with bribery in his courtroom, and was told that the FBI had asked that he call them so that they could interview him about the matter, and he was given the number of the Washington Office of the FBI.

But Alcee Hastings did not call them, as they requested. Instead, Alcee Hastings fled from the city. Though he had just arrived that morning with plans to stay through the weekend, he left Washington, DC, so fast that he did not check out of the hotel, he did not pay his room service bill, and he even left behind one of his suits.

Where did he go? The logical route of departure back to Miami would be to go to National Airport, 10 minutes away from the L'Enfant Plaza Hotel, where a Miami-bound flight with seats available, was scheduled to leave at 4:35 p.m. But that was too logical, and so, instead, Judge Hastings took a $50 cab ride to the Baltimore-Washington International Airport, one hour and 32 miles away, and booked a 6:35 p.m. flight for Miami, Florida.

And while waiting for his plane to leave, Judge Hastings made his first phone call since learning that the bribery-conspiracy scheme had been discovered. He called his mother. He then called his fiance, Patricia Williams. He spoke with her briefly, and then he moved to another pay phone and he called her again. He then gave her the number of his pay phone and told her to leave her house and go to a pay phone and call him back at the pay phone he was using, and when she called him back twenty minutes later, he took her number, the number of the pay phone she was using, and then he moved to yet another pay phone and called her once again.

Forty minutes later, Judge Hastings boarded a plane, his destination was Miami International Airport, where his car was parked. But when the plane made an intermediate stop in Fort Lauderdale, Judge Hastings got off there and rented a car.

Members of this committee, what would cause a United States District Judge to flee from a city upon learning of the arrest of his close friend? What would cause a U.S. District Judge to refuse a specific request from the FBI to call them and to help them and, instead of doing so, to leave town by a circuitous route only a few hours after having arrived? Why would a U.S. District Judge go from pay phone to pay phone and instruct the person that he was calling to leave her home and go to a pay phone to call him back at his pay phone?

Well, the answer is because this district judge, Alcee Hastings, was engaged in a corrupt conspiracy to obtain $150,000 from defendants in his court, in return for the imposition of sentences which would not require incarceration, as charged by the House in Article I of the Articles of impeachment, but the conspiracy on this day came to an abrupt end.

Alcee Hastings' career as a district judge began on October 22, 1979, when he was sworn in as a U.S. District Judge for the Southern District of Florida. William Borders attended his investiture ceremony, as did a mutual friend of both of them, Hemphill Pride, a former classmate of Judge Hastings.

Within the first week he was on the bench, the case of *United States* v. *Thomas and Frank Romano* was assigned to Judge Hastings, and in December 1980, the Romanos were tried before a jury and were found guilty of embezzling a Teamsters pension fund.

During this trial, in the court of Judge Hastings, the prosecution made a proffer, out of the presence of the jury, that the Romanos had a history of making payoffs. After their conviction, a post-trial hearing was held to determine whether any of the Romanos' property should be forfeited under the RICO statute. That hearing before Judge Hastings began in December, was continued in February, and the parties were instructed to file post-trial hearing briefs in March.

At about the same time, in March 1981, William Borders met in Washington, DC, with a career criminal from south Florida named William Dredge, who had connections with organized crime figures, and he asked William Dredge to get information for him about Tom and Frank Romano, the defendants in the case pending before Judge Hastings. Specifically, he wanted him to find out what kind of people are the Romanos, and Dredge did that.

He went back to Miami, he made inquiries, he reported back to Mr. Borders that "they are stand-up guys," to use his language. He reported that they were reliable, "they won't tell the authorities about things which are meant to be confidential." And upon hearing this, Mr. Borders asked Mr. Dredge to get a message to the Romanos, and the message was, "There's a lawyer in the District of Columbia who could help them with their case before Judge Hastings."

Dredge did as he was asked, he conveyed the message, and the evidence we will bring forward to you will show that sometime in early April, the Romanos were contacted and were told that there was a DC lawyer who could help them with their case.

The Romanos, however, decided not to follow up on the offer. Dredge never heard anything back from the person who relayed the message to him from the Romanos, and when Mr. Borders asked Mr. Dredge about the Romanos, Dredge said, "They're not interested."

The matter could have ended there, but it didn't, because Borders kept asking Dredge, "Why aren't the Romanos interested?" He said, "The judge can't believe that they won't come up with the money," and Dredge kept making excuses. He really wasn't talking with the Romanos, but he pretended to Borders that he was. He said, "They don't have the money," he told Borders one time. Another time, he explained their unwillingness to deal with him by saying that they have another contact to the judge, and upon hearing this assertion from Dredge, the criminal figure and his connection to the Romano family, that the Romanos had another contact to the judge, Borders threw down a challenge, "Let the other contact name a time and place for Judge Hastings to appear," said Borders, and Borders said he would name a time and place, "and then we'll see where the judge shows up, and that will prove who controls Judge Hastings."

Finally, as the day approached for the Romanos' sentencing, Mr. Borders told Dredge that Judge Hastings was going to give the Romanos one more chance, instead of sentencing them on their scheduled date, Borders said Judge Hastings was going to continue the sentencing hearing, and indeed, just as Borders had promised, Judge Hastings postponed the sentencing, in spite of the fact that the Strike Force attorney had flown in for sentencing from Atlanta, and in spite of the fact that five months had passed since the Romanos' trial and conviction.

Dredge, the criminal figure, now recognized that the Hastings-Borders conspiracy was for real, and he also recognized an opportunity for himself and it was an opportunity that Dredge badly needed, because the day before, on May 10th, he was arrested on drug charges, based on a Federal indictment pending in Baltimore.

Further confirmation of the Hastings-Borders conspiracy that Dredge was observing soon appeared, because the *Romano* case was not the only organized crime case pending in Judge Hastings' court. Also pending was the Strike Force prosecution of Santos Trafficante, the organized crime boss of south Florida.

While in the home of the same Washington gambling figure with whom he had first met William Borders, Dredge saw another house guest, a person Mr. Dredge believed to be Santos Trafficante, and Mr. Trafficante was trying to arrange a meeting with that same good friend of Judge Hastings, William Borders.

Over the next couple of weeks, Mr. Dredge was in Washington on two occasions. He saw William Borders, he saw Judge Hastings, and from bits and pieces of information, he concluded that Trafficante was contacting Borders for the purpose of paying a $1 million bribe in exchange for a favorable result in the case.

On July 20, 1981, facing prosecution in his own drug case, Dredge, having watched deals in the *Trafficante* case and in the *Romano* case in progress, decided to try and make a deal on his own case, only his deal would be with the U.S. Government. It was a risky decision for Dredge, for to be caught informing on Santos Trafficante would put him in fear for his life. On the other hand, the alternative for a career criminal would be prison.

So, he went to the U.S. Attorneys Office in Miami and said that he had some information on the *Trafficante* case, he was referred to the Strike Force attorney in charge of that case, Martha Rogers, who will testify before you, he told her about the million-dollar bribe, and said that, in exchange for more detailed information about the case, he wanted his charges, his drug charges dismissed. He also told her that Judge Hastings, through this same attorney, William Borders, was soliciting a bribe from other defendants in his court, Frank and Tom Romano, and Mr. Dredge brought details.

To back up his allegation, Dredge said that the prominent Washington attorney who was soliciting the bribe was coming to Miami the next day to meet with Trafficante, and he added that the lawyer would fly back to Washington on the same day, and that Dredge himself was supposed to pick the lawyer up at the airport.

Based on this information, the Department of Justice told the FBI to set up surveillance, and at the airport the FBI agents and Prosecutor Rogers watched William Borders step off the airplane. After waiting at the terminal for over an hour, Mr. Borders finally took a cab to Mr. Dredge's home, from there Mr. Dredge took Borders to a cab stand, from the cab stand Borders took a cab to the Fontainebleu Hotel, and there he met with Santos Trafficante in a meeting that lasted only 10 minutes. Trafficante then drove Borders back to the airport and Borders left Miami.

For the coming month, Dredge continued to talk with the FBI and with attorneys from the Department of Justice about the Hastings-Borders bribery schemes, and he tried to negotiate a deal for his upcoming Baltimore case. In August, almost a month after his first conversations with the Strike Force, Dredge told the FBI that Borders was coming again to Washington to meet with Trafficante.

Again, surveillance was set up and once again Borders arrived, just as Dredge said he would. This time, Borders took a cab directly to the Fontainebleu Hotel, got out of the cab, walked down the sidewalk, immediately got into a car driven by Santos Trafficante, and the two of them drove directly back to Miami International Airport, where they parted.

Dredge, now, had twice predicted meetings between Trafficante and Borders, and both times the meetings had occurred. Dredge, having accurately predicted these meetings and given accurate information, was willing to help the Department of Justice, but he was not willing to actively involve himself in the Trafficante bribery case, because it was too dangerous and, besides, as recognized by the Department of Justice, there really was no way to help. Borders already was dealing face-to-face with Trafficante, it would be difficult to insert anyone into their negotiations.

But in the *Romano* case, the situation was quite different. Borders had not yet met either of the Romanos. Dredge, therefore, agreed to participate in an undercover plan in relation to the Romano bribery-conspiracy scheme, and this was made even more possible because, throughout July and August, Borders had continued to talk to Dredge about the *Romano* case.

In July, Hastings had sentenced the Romanos to three years in prison, and he had affirmed his previous order forfeiting Romano property. Borders told Dredge that if Romanos paid a bribe, Hastings would change their sentences from prison to probation, and the undercover plan was agreed to.

In late August or early September, Dredge started telling Borders that the Romanos were showing some interest in the bribery deal. Borders then set a condition for conducting the deal. Borders said he would meet only with the Romanos, and not with an intermediary, and finally, on September 10th, Mr. Dredge called William Borders and told him that the Romanos were ready to deal. It was agreed that Mr. Borders would meet the undercover agent who was posing as the defendant, Frank Romano, two days later, on Saturday, September 12th, at the Miami International Airport.

Now, that call from William Dredge arranging that meeting between Borders and the man Borders believed to be Frank Romano was at 1:29 p.m. That same day, the evidence we will bring to you will show that there was an exchange of phone calls between William Borders and Judge Hastings. At 5:10 p.m., that same day, a call was placed from Judge Hastings to Borders and a message was left that Judge Hastings would be waiting for Borders' call. "Have him get off the bench," is what the message said. We will bring evidence that, at about twenty minutes later, there was a four-minute call placed from Borders' office to Judge Hastings' chambers.

On Friday, the next day, September 11th, both Judge Hastings and William Borders had plans to travel. Borders was flying to Miami in order to meet the next morning with the person he thought was Frank Romano, he was then going to go to a long-scheduled family reunion afterwards in Fort Pierce, Florida.

His flight was scheduled to depart Washington at 7:30 p.m. Judge Hastings, on the other hand, was coming to Washington for the weekend. He was scheduled to arrive in Washington at 9:00 p.m. During that day, Judge Hastings changed his reservation, to take an earlier flight, one that would arrive at 6:00 p.m. instead, a full hour and a half before Borders was to leave Washington, DC.

When Judge Hastings got to the airport that Friday afternoon, he found that the new flight he had rescheduled in fact had been delayed, and he called Borders twice and left a message that his flight had been delayed. Finally, the flight took off, and Judge Hastings arrived at Washington National Airport at 8:00 p.m.

I ask you to focus on this question: Why did Judge Hastings bother to inform Borders that his flight was delayed and that he would not arrive before Borders departed, as originally planned? The answer may be found in the fact that Borders decided to skip his 7:30 flight, instead, he decided to depart Washington National Airport on a later flight, one that left an hour and a half after Judge Hastings arrived.

Interestingly, the evidence we will bring to you will show that Judge Hastings, having arrived in Washington at about 8:00 p.m., did not check into his hotel until after 10:00 that night, and this overlapping period at National Airport occurred the night before the first-scheduled meeting between Mr. Borders and the man he thought would be the defendant in Judge Hastings' court, Frank Romano.

The next morning, William Borders met William Dredge and William Dredge introduced William Borders to the undercover agent who was posing as Frank Romano. Playing the role of Frank Romano was a retired FBI agent of the approximate age of Frank

Romano named H. Paul Rico. Dredge introduced Rico as Frank Romano and left the two of them to talk by themselves.

You will hear in this hearing room the tape-recording of that meeting between William Borders and H. Paul Rico, and you will hear that it was at this meeting that the bribery deal was struck.

Let me point out just a couple of facts about that meeting. First, William Borders did not practice law in Florida. He was a D.C. lawyer. The *Romano* case had received no national news coverage, yet William Borders, in his meeting with the man he thought was Frank Romano, knew a great deal about the *Romano* case. He knew the defendants had been sentenced. He knew their case was on appeal. He knew their property had been forfeited to the government, and he promised that, on payment of the bribe, a substantial amount, not all, but a substantial amount of the property would be returned, and he said that once the property was returned, the Romanos should withdraw their appeals and their sentences would be reduced.

The undercover agent listened to William Borders' offer and then he asked William Borders for proof, before paying anything, that Judge Hastings was really in on the deal, and Borders offered him, just as he had offered to Dredge months earlier, as I told you a moment ago, to have the judge appear at a place chosen by the agent. In fact, Borders suggested the following Wednesday, September 16th, and the undercover agent, posing as Romano, chose the main dining room of the Fontainebleau Hotel, at 8:00 p.m. that evening.

The undercover agent then asked if Borders needed to check with the Judge to be sure the time and the place chosen was adequate, was acceptable, but Borders said no, that would not be necessary. The two of them then parted and agreed to meet again at the same place one week later, the following Saturday.

The deal having been struck, Borders left Miami and went on to Fort Pierce, Florida, for the long-planned family reunion that same day, but he cut his trip short, he cancelled his plans to stay overnight at the family reunion and, after enormous effort, managed to arrive back in the Washington area at 9:00 p.m. that night, and by 10:00 p.m. that night, William Borders was in Judge Hastings' room at the Sheraton Washington Hotel. In fact, the next morning William Borders drove Judge Hastings to the airport.

With regard to the plan to have Judge Hastings appear at the prescribed place, we will bring you evidence to show that Judge Hastings arrived back in Miami, that he made reservations for two for dinner at the Fontainebleau Hotel, and on the specified night that he was to appear, September 16th, at precisely the time arranged, Judge Alcee Hastings appeared exactly as promised.

On the following Saturday, September 19th, Judge Hastings, having fulfilled the first condition of the bribery deal, Borders was again in Miami for his meeting with Rico, a second meeting with Rico, just as planned.

The undercover agent gave Borders $25,000 at that meeting in up-front money and, in response, Borders said that in 10 days an order would issue returning some of the Romanos' forfeited property, and they agreed to meet again the next Saturday, October 3rd for the final payment of the $150,000 bribe.

But by October 2nd, the order that was promised returning the property still had not been issued, and so the undercover agent posing as Frank Romano called Borders to find out what was going on, why hadn't the order been issued. You will hear in this hearing room wiretap phone calls in which Borders learned from Rico that the order had not gone out, and in which he told Rico to call back on Sunday morning to find out what was going on. And that same day, the secretary in Borders' office called Judge Hastings' chambers and was told that the judge had left for the day.

When the undercover agent called on Sunday morning, as Borders had told him to, Borders said that he hadn't been able to talk to anybody and told him to call him again the next day. You will hear tape recordings of that conversation as well, and that Sunday afternoon, the record will show that we will bring to you, that William Borders called Judge Hastings' house and left the judge a message. This was Sunday.

The very next morning, Monday morning, Judge Hastings walked into his law clerk's office and told the law clerk to complete an order remitting the Romanos' property right away. In spite of the fact that there had been two Fifth Circuit decisions on point compelling the return of a substantial amount of Romanos' seized assets since his ruling that they were to be forfeited, the last of which had been specifically brought to the Judge's attention by his law clerk, the order had not been completed. In fact, there had been no pressure to complete it. But that morning, that Monday morning, October 5th, Judge Hastings made it clear that he wanted that order done and done now.

The law clerk left his chambers immediately, went home to work on the order, and later that afternoon Borders talked to Rico and assured him that everything Borders talked to the undercover agent, Frank Rico who was posing as Romano, and assured him that everything had been taken care of and that the order would go out that day or the next morning.

Members of the committee, in fact, the order remitting property to the Romanos, which had been promised, did go out the next day, it was mailed out in the evening and it was mailed out special delivery. The anticipated order returning the property having now been issued, Borders and the undercover agent posing as Romano talked again, and you will hear the tape recording of them making the arrangements for Rico to bring the final payment of $125,000, the balance due, to Washington, DC.

On October 9th, Rico, the undercover agent posing as Romano, was in Washington. On October 9th, Judge Hastings also came to Washington, and that was the day William Borders was arrested, and that was the day Judge Hastings fled Washington, DC, and that was the day that the bribery-conspiracy was brought to an abrupt end.

I regret to say that the House must come to the committee today and assert that Judge Hastings' pattern of impeachable conduct did not end on October 9, 1981. It continued into 1983, and indeed into 1985. Judge Hastings and William Borders were indicted for the bribery-conspiracy in December 1981. Their trials were severed, because of a legal issue raised by Judge Hastings. William Borders, therefore, was tried and convicted, was tried alone and was convicted in March of 1982, and Judge Hastings' lawyer had the opportunity to observe, and indeed did observe the proceedings in the William Borders case.

Nearly a year later, Judge Hastings was tried and acquitted in January and February of 1983. It is an acquittal that cannot be overturned, Judge Hastings cannot be criminally prosecuted again, but he can be removed from office, and it is the contention of the House, as it was the contention of the United States Judicial Conference and the Investigating Committee of the Eleventh Circuit and the unanimous vote of the Subcommittee on Criminal Justice, the vote of the Judiciary Committee and of the House of Representatives, that that acquittal was the product of repeated lies and the presentation of fabricated evidence by Judge Hastings at his criminal trial.

Judge Hastings testified at his criminal trial that he did not meet with William Borders to solicit a bribe, that he never promised in connection with that bribe to modify the sentences of the Romanos or to return property previously forfeited.

The House contends to you that in making each of these statements, Judge Hastings lied under oath, as alleged in Articles II, III, and IV of the Articles of impeachment.

Judge Hastings testified at trial that he was surprised when William Borders appeared at his Sheraton Hotel room at 10:00 p.m., the night of his first meeting with the man he believed to be Frank Romano.

We will bring to you evidence that, on September 12, 1981, Judge Hastings, with a group of friends, was still waiting at 10:00 p.m. to go to dinner, and one of the women waiting in the room will testify before this committee that they were waiting for William Borders. In making this statement, Judge Hastings was lying under oath, as alleged in Article VI.

Judge Hastings testified under oath at trial that his timely appearance at the Fontainebleau, at precisely the time that had been arranged, was not a part of a plan to show his participation in the bribery scheme. He stated at trial that William Borders had asked him to meet him there, but we are going to bring forth evidence that Judge Hastings made the reservations for the Fontainebleau, that he made the reservation for two, that Judge Hastings brought a date who will testify to you that he never mentioned meeting any other person at that restaurant, that they were seated at a table for four, and that when the two extra place settings were removed by the waiter, Judge Hastings made no protest, which would indicate he was expecting anyone else.

Contrary to Judge Hastings' testimony, Borders never planned to be in Miami. Borders that night was in Las Vegas, at the championship fight between Sugar Ray Leonard and Tommy Hearns, which he had been planning to attend for weeks. Judge Hastings lied under oath about the Fontainebleau dinner, just as alleged in Article V of the Articles pending before you.

Judge Hastings further testified at trial that his instruction to his law clerk to finish the order remitting forfeited property to the Romanos was not in furtherance of the bribery-conspiracy. But as the facts I have already stated indicate, when he made that statement, he was lying under oath, as alleged in Article VII of the Articles of impeachment.

Members of the committee, I began my presentation this morning with a description of the arrest of William Borders and the circumstances of Judge Hastings' fleeing from Washington, DC, when he learned of the arrest.

On the witness stand, Judge Hastings testified that he didn't flee from Washington, DC, when he heard that William Borders was arrested and that, instead, he left because when he called his mother from his hotel room at the L'Enfant Plaza, she insisted that he come home because she was so upset. He also claimed that he called his fiance, Patricia Williams, from his hotel before leaving and fleeing the city, but the House will bring forth live testimony and documents that Judge Hastings made no calls from the L'Enfant Plaza on the afternoon of October 9th, and that when he testified that he made calls, he lied under oath, as alleged in Article XIV.

Finally, Judge Hastings testified at his criminal trial about a conversation which he had with William Borders on October 5, 1981. You will recall from my earlier presentation that, on the morning of October 5th, Judge Hastings had instructed his law clerk to do the *Romano* order remitting property and to do it right away. Later that day, Borders reassured Rico, the undercover agent posing as Romano, by telephone that the order had been taken care of, and you will hear a recording of that conversation.

You will also hear that, just forty minutes later, Judge Hastings called Borders and Judge Hastings and Borders had a brief coded telephone conversation, a conversation between two co-conspirators that makes no sense on its face, but clearly made sense to the co-conspirators. You will hear a recording of that conversation.

Judge Hastings testified under oath that that conversation was not about the bribery scheme. He testified that, instead, the conversation was about a mutual friend of Borders and Hastings named Hemphill Pride, whom I mentioned earlier, who had been suspended from the practice of law and needed letters written in support. He testified that the phone call, the coded conversation was not a coded conversation, but was a letter with regard to the letters that he had drafted in support of his friend, a friend nicknamed "Hemp," but Hemp, whose real name is Hemphill Pride, will testify before you and will repudiate that explanation, pointing out that it is not possible and does not make sense. And further, the House will present the expert testimony of the chairman of the Department of Linguistics at Georgetown University, that the conversation was not about letters for Hemp, but that it is a conversation in code between the two individuals on the telephone.

The evidence brought forth by the House will show you that when Judge Hastings testified that the conversation was about letters for Hemp, he was in fact lying under oath, as alleged in Article VIII.

In support of his contention that the conversation was about letters for Hemp and that it was not a coded conversation between the two co-conspirators, Judge Hastings offered into evidence at trial three yellow sheets of paper, and these are those yellow sheets of paper, and he said that these were letters which he had drafted while he was on the bench, October 5, 1981, and that these were the letters he was referring to in that conversation.

We will bring you evidence that Judge Hastings' assertion that these were letters, the letters that he referred to in that conversation, is without credibility and that, in fact, he was lying under oath, as alleged in Article IX.

Still trying to explain away the coded conversation which you are going to hear between himself and Borders, Judge Hastings testified at trial that both he and Borders had spoken with Pride during the summer and early fall about his suspension from the bar, in an attempt to further explain why that conversation took place. Judge Hastings, in attempting to do that, had his lawyer at his criminal trial show him certain telephone bills which he testified reflected that he and William Borders had been calling Hemphill Pride.

I think at this point it is pertinent to observe who was Judge Hastings' lawyer at that trial. Members of the committee, Judge Hastings' lawyer at that trial was Patricia Williams, his fiance who he had called from airport pay phones on the night he fled Washington, who he instructed to leave her house and to go to pay phones and to call him back at pay phones, and who at that time was not an experienced criminal defense lawyer. At trial, Judge Hastings had her show him the telephone bills which belonged to Judge Hastings, William Borders and Mrs. Williams herself, and Judge Hastings pointed to particular calls on these bills and said that they were all calls to Hemphill Pride, in an attempt to explain away the coded conversation.

But the evidence which we will bring to the committee will show that four of the five calls were not calls to Hemphill Pride, but in fact they were calls to phones to which Hemphill Pride had never had access. Indeed, one of the calls was a call to the former mother-in-law of Patricia Williams, Judge Hastings' lawyer. Judge Hastings intentionally misrepresented the truth about these telephone calls, in an effort to explain away the coded conversation between him and his co-conspirator, and in doing so he lied under oath, as alleged in Articles X through XIII of the Articles of impeachment.

Finally, members of the committee, as I stated a moment ago, Judge Hastings' misconduct did not end here. It continued into 1985, with his misconduct in his official capacity as the supervising judge of a court-authorized wiretap. This impeachable offense alleged in Article XVI will be the subject of a second opening statement later in our case.

It is sufficient to say that Judge Hastings' participation in the bribery-conspiracy in 1981, his false testimony and fabrication of evidence at his criminal trial in 1983, his disclosure of confidential wiretap information in 1985 present a pattern of misconduct which cannot be tolerated in a United States District Judge, as alleged in Article XVII of the Articles of impeachment.

Judge Hastings' conduct has undermined confidence in the integrity and the impartiality of the Judiciary, it has betrayed the trust of the people of the United States, and it has brought disrepute on the Federal courts and the administration of justice in America.

The House of Representatives this morning submits that Judge Hastings is guilty of 17 impeachable offenses, and at the conclusion of this case we will ask the Senate to remove him from office.

I thank the members of the committee for your attention to this lengthy statement. We will reserve the balance of our time for a later opening statement with regard to Article XVI.

The CHAIRMAN. Thank you.

Next, we will hear the opening statement for the respondent, for Judge Hastings. Mr. Anderson, did you wish to take the full hour or to reserve some of that for later?

Mr. ANDERSON. Mr. Chairman, I would like to reserve about the same amount of time as Mr. Bryant has to address the Article XVI charges when the House opens on that issue.

The CHAIRMAN. All right. Go right ahead.

OPENING STATEMENT ON BEHALF OF THE RESPONDENT

Mr. ANDERSON. Mr. Chairman and members of the committee, as I listened to Mr. Bryant speak this morning, I was struck by how similar his opening statement in 1989 was to the closing argument that Reid Weingarten made to the jury in 1983.

I would like to correct a few points, one of which I hope will not recur. Alcee Hastings and Patricia Williams are not engaged to be married. She is not his fiance. They are close friends, they have been close friends, but the attorney/fiance that has crept in is a point I would hope we could eliminate from future reference in this case.

But let me take Mr. Bryant where he started. On October 9, 1981, Alcee L. Hastings was in town for a long-planned dinner cruise to honor a man who was the outgoing President of the National Bar Association, the principal bar association for lawyers in America who are black. It was a dinner scheduled to honor a man who had, by all accounts, been a significant advisor on minority affairs to President Carter's administration and in his campaigns. It was, by all accounts, a man who was either a member or a principal fund-raiser and advisor to the Democratic National Committee and to his Finance Committee. It was, by all accounts, a dinner to honor a man who, if not the principal, certainly one of the most significant advisors to President Carter and Attorney General Bell in the selection of minority candidates for the bench during the Carter administration. It was, by all accounts, a dinner to honor a significant black political figure and a political figure who, in truth, probably did have a good bit to do with Alcee L. Hastings' appointment to the bench.

Sometime in that afternoon, Alcee L. Hastings was told that the FBI had arrested this significant political figure and that the accusations presumably or, at least purportedly, had something to do with his courtroom. Alcee L. Hastings was advised to, and he did, go home.

Alcee L. Hastings had three days before issued an injunction enjoining the Attorney General of the United States and the Director of the Immigration and Naturalization Service from dealing with the Haitian boat people as they would have preferred.

Alcee L. Hastings had pending before him, as Mr. Bryant has told you, a case against Santos Trafficante, Anthony Accardo and a number of other people. Alcee L. Hastings was an outspoken black liberal activist judge, and Alcee L. Hastings was black.

It is hard not to be aware that the FBI's record in dealing with minorities in this country, and particularly with black civil rights activists, is less than impeccable. Viewed from the situation of Alcee L. Hastings on October 9th, he had just been informed that one of his friends and close political associates had been arrested and that the FBI had something to say to him.

Now, he could have, as perhaps Mr. Bryant would have, rushed down to the FBI in Washington and said what is this. He did not. He had an invalid mother, housebound, in Florida. His home was in Fort Lauderdale, Florida, not Miami, Florida. He was advised to return to his home before talking to the FBI, a community where he had advisors he trusted and significant support. He got on an airplane and he got off in Fort Lauderdale, Florida, his home.

What Mr. Bryant did not emphasize is that later that evening he spent two hours at least, perhaps more, with the FBI, he responded and they, if they are truthful—and I think they will be on this point—responded to every one of their questions.

Alcee L. Hastings learned Bill Borders had been arrested, he learned the FBI wanted to talk with him, and he went home and he talked with the FBI. What is surprising in the circumstances is not that he went home, but that he talked with the FBI at all.

But let me go back and, in this massive data that Mr. Bryant has brought to your attention, see if there is not another story in the evidence, and let me start with who was Alcee L. Hastings.

Alcee L. Hastings was, is, and will forever be an innocent man. Alcee L. Hastings is a man who had fulfilled the dream. Alcee L. Hastings was born and reared in a segregated community in central Florida. He was reared by his grandmother, because his mother and father were household retainers and servants who traveled to make the money necessary to support him. Alcee L. Hastings went to segregated schools in our society, including a law school before Florida was willing to accept the fact that separate but equal applied to higher as well as lower education.

Alcee L. Hastings became, nonetheless, a member of the bar. He became a community leader. He became a lawyer who served. He did criminal defense, he was a good trial lawyer, but he brought civil rights actions that he didn't get paid for, he served on school boards, represented school boards, he was active in the affairs of his community, he indeed became the first black to run in the statewide Democratic Party for the Democratic nomination to be a Member of the body of which you are all members.

By 1977, Alcee L. Hastings was an established figure in the south Florida community life and in the national bar association, both the American and the National Bar Associations. That service was recognized in 1977 when a Judicial Nominating Commission, a merit selection body, nominated Alcee L. Hastings, along with two others, to be a Circuit Court Judge in Florida. It was confirmed, when Governor Reuben Askew selected Alcee L. Hastings to be a member of the Circuit bench. It was reconfirmed when Jimmy Carter, the President, nominated, this body confirmed, and President Carter appointed Alcee L. Hastings to become the first black member of the bench of the Southern District of Florida.

That is who Alcee L. Hastings was. He came to the bench, and the FBI will admit it, with a reputation of a man who lived within his means, not of an avaricious man. In point of fact, his public service commitments had been such that his State court judge salary was more than he was making as a lawyer, and his Federal salary, he may be among the few Federal judges for whom his income is higher and has been as a judge than it was as a lawyer. This is not a man who set out to make money. This is a man who, like everyone else, knew William Borders. This is a man who was close to William Borders, but he knew the William Borders who had cultivated and been cultivated by persons in high officialdom, a man who, by all accounts, until October 9, 1981, had an unblemished reputation.

Mr. Bryant now talks and tells a story that you will see in the evidence. I think you will see a different story. And he starts, if I understood him today, significantly with July 20th, when William Dredge came in. A couple points to emphasize in Mr. Dredge's story and to focus upon who are the real accusers of Alcee L. Hastings—William Dredge.

William Dredge, you will learn, is a career criminal. William Dredge, you will learn, covertly was a career informant. For all practical purposes, William Dredge was licensed to act as a fence, a big-time fence by the Federal Government.

Starting in 1974, Mr. Dredge began feeding covert information on criminal activities. Although he had spent hard time in prison before, until 1981 he appeared not seriously threatened in his business enterprise. William Dredge is a liar.

William Dredge, when he came forward, said, he repeated before the Investigating Committee four years later, he has repeated in depositions here, he had one and only one basis for believing that Alcee L. Hastings was involved in William Borders' scam—focus on it, one and only one—and that was not that Judge Hastings would grant a continuance. That was that Judge Hastings would grant a *sua sponte* continuance in the sentencing of the Romanos, without request from anyone.

You will hear in the first witness that there was no *sua sponte* condition, that Neil Sonnett, a senior member of the criminal defense bar, nationally and in Florida, came in on May 11th, apologized to Mr. Deichert for not giving him any notice, apologized to Judge Hastings for not giving him any notice, but employed a continuance because his other commitments and his recent entry into the case had precluded his preparation. You will see in the transcript, Judge Hastings took the bench and announced, "I am ready to proceed with motions and sentencing," and it was only after heated argument that there was a continuance granted. It was not *sua sponte*. But Mr. Dredge has said Mr. Borders told him it was.

Mr. Dredge will tell you he knew Borders was a rainmaker. Borders made claims with respect to other judges. But only this *sua sponte* continuance, according to Mr. Dredge, his only basis. He came in on January 20th. It will be interesting to know whether anyone called Jim Deichert or looked at the file to see if there was a *sua sponte* continuance.

But on the basis of William Dredge and his claim about Santos Trafficante and William Borders, who the government knew was making such claims with respect to other judges, Operation Apple Eye was initiated. After the plea bargain, we go forward. But now let us focus on what is not a part of the House story.

Mr. Bryant has conceded that the *Romano* order Judge Hastings issued was compelled by binding precedent. In June, there had been a decision, *United States* v. *Martino*, in which the Fifth Circuit erroneously, as it turned out, said that proceeds, as opposed to investments in a criminal enterprise, were not subject to forfeiture. Judge Hastings in his earlier order had forfeited the proceeds as well as the investment.

Mr. Miller was assigned responsibility for drafting an order. Mr. Miller will account for his delays through early September. But on August 27th, the Court of Appeals issued an order summarily reversing a district judge who had had the chutzpah not to follow *Martino*. Judge Hastings had announced his intention to try and avoid *Martino* at a July 8th hearing.

Before September 10th, Jeff Miller, the law clerk, went to Judge Hastings and said, "Judge, the Circuit's following *Martino*, better give them the money back." Before September 10th, Judge Hastings said to Mr. Miller, "All right, give them the money back, but make sure your order says I disagree with those precedents."

Now, why, if there was an ongoing conspiracy, as the House sometimes suggests from its pattern of context, as of before September 10th, why did Judge Hastings give them the money back? The government would have supported his position if he hadn't, and that would have shown that the Romanos, why they should have come forward. No, he gave them the money back. If, as I understand the opening statement, the conspiracy really began on September 10th, what was there left to conspire about? Why did Judge Hastings give them the money back?

Well, we go beyond, we have a meticulous documentation of the contacts between Mr. Dredge—well, we don't have a very meticulous, but we have documentation that Dredge was in touch with Borders who was in touch with Rico and Romano all over. But what about some other contacts?

Borders not only promised that Judge Hastings would have dinner at Fontainebleu, he promised on September 12th, the order will be out in 10 days. On September 19th, when they met again, he said, well, 10 days from today, but by September 29th, in any event—a safe prediction by anyone who knew Judge Hastings' rotation schedule for his clerks. Mr. Miller was scheduled to be gone, and it was Mr. Miller's case and was known to be.

But the order didn't come out by September 29th, by September 30th. What evidence do we have? Mr. Miller, from the time that the *Peacock* discussion when Judge Hastings told him to get the order out, until October 5th, no discussions, no prodding from Judge Hastings. Why, if Judge Hastings was involved in a $150,000 let's-make-a-deal, why, if Mr. Borders was reporting to him, "I promised him that the order would be out within ten days, by the 29th, why not, "Mr. Miller, I'd like to see that order, I'd like to see it this week."

Some of you may have occasionally dealt with your legislative assistants. It is not beyond your capacity to ask for something to be done on a specific date, with some confidence that it will be delivered. Why not the *Romano* order? All it illustrates is that Mr. Borders didn't know that Judge Hastings had negotiated with another judge in the court a one-month extension for Mr. Miller.

Well, what about these phone conversations between Mr. Rico and Mr. Romano? Two points to watch in the evidence. When the order didn't come out, there was some concern, perhaps not as much as there should have been, among the government. The order didn't come out on September 29th, it didn't come out on September 30th. We're trying to nail a Federal judge—wiretap, let's find out what's going to happen.

Mr. Rico calls Mr. Borders, "I'll check it." Mr. Rico calls Mr. Borders, "I haven't been able to get through to the Judge." Mr. Rico calls Mr. Borders, finally, on October 5th, at 4:22 in the afternoon, "It has been taken care of." There is no evidence—yes, Mr. Borders left messages for the judge—there is no evidence eight years after the fact, with meticulous reconstruction of telephone records and everything else, no evidence of any communication between William A. Borders and Alcee L. Hastings during the crucial periods of September 29th to October 5th.

Mr. Bryant would argue that, because forty minutes after Mr. Borders had assured Rico-Romano that the matter had been taken care of and his undisclosed friend should tell him about it, forty minutes after the fact, Judge Hastings called and discussed letters for Hemp. That, the linguist will tell you, was a guarded conversation. How any useful information could be conveyed to Mr. Borders, if he already knew the matter had been taken care of, by that conversation is a matter that we will leave to you and your colleagues, as Judge Hastings left to the jury.

That is the story, but there is another story that you must focus upon, is a story that has never come out. The contacts between the two men were known back in 1981 largely, and you will see little that's new. The story Mr. Bryant presented to you today, the story he sees in the evidence was exactly the same story that Mr. Weingarten saw in the evidence and gave the jury.

But there is some new evidence here, and that new evidence is Borders was a practiced rainmaker. There was another Borders, one that none of the persons in the Carter administration, political figures, and presumptively Judge Hastings, didn't know about. That was a Borders who cultivated criminal associates. That was a Borders, as had the other Borders, who had risen to cultivate high criminal associates by 1981—Joseph Nesline, Santos Trafficante, William Dredge—he was a big league rainmaker now.

That Judge Hastings cried out for as information in 1981 at his trial, because he believed that was withheld from him. And I want you to look, to the extent in 1981 it can be reconstructed, at the pattern of contacts between William Dredge, Joseph Nesline, and William Borders.

Ladies and gentlemen, in August and September of 1981, William Borders, William Dredge and the FBI had a common purpose. If Mr. Borders was to get the $150,000 he wanted to get, he had to demonstrate some control over the Judge. If Mr. Dredge, the career criminal who was facing a major, not a minor league, drug dealing case, wanted the Government to talk about real cooperation, significant cooperation that would keep this career informant out of prison, where his life would not have been worth a great deal, if he wanted that kind of cooperation, it was in his advantage to help the Government get the big fish, the lawyer. The FBI had other investigations going and could have dealt with Mr. Borders, but the big fish, the judge. It was in Mr. Dredge's interest. And look to make sure you have all of the available contacts between Mr. Dredge and Mr. Borders in mind, both before and after this alleged conspiracy.

And the FBI, however you cast it, you must at least concede on the evidence that they were enthusiastic in trying to get to Judge Hastings, and they couldn't get to Judge Hastings unless they, too, were able to find a demonstration. The dinner at the Fontainebleau—Judge Hastings did respond to that invitation. The promise that the order would be out in ten days—within ten days of September 19th, by September 29th—that promise, that promise upon which the undercover scenario and the Director's approval was conditioned, it didn't happen and they can't account for it.

Alcee Hastings should be the dream fulfilled. He was in 1981 an innocent man. In 1983, the jury so found. I would ask you and I would ask you to ask your colleagues, what is there in 1989 besides a lot more information about William Dredge that justifies any decision other than sending that man home to the bench?

The CHAIRMAN. At this time, we will hear any argument that either the House or counsel for Judge Hastings would like to make on procedural questions that the parties wish to be presented to the committee before we begin witness testimony.

Mr. Baron, did you wish to speak for the House?

PROCEDURAL PROPOSALS BY THE PARTIES

Mr. BARON. Yes, if I may.

The House raises several procedural issues which we would like to have dealt with and addressed. First, in the filings that Judge Hastings made recently concerning the witnesses he intends to call, the Senate Committee had directed that the parties should list those witnesses in the proposed order in which they would be called.

We noted that the list provided by Judge Hastings and his counsel is in alphabetical order. I would assume that is not the order in which he intends to call them.

We would request that they be directed to provide a list which reasonably approximates a good-faith idea of how they intend to present our case. I would note that the House was requested to do so, and has done so, and we think it would be helpful and, indeed, more fair if we have a reasonable idea of the order in which they intend to present their witnesses. It is a small matter, but it is one that we would like the committee to address.

A second item deals with various charts that the House has had prepared which would constitute demonstrative evidence in connection with this trial. There are two charts, in particular, which set out events for the months of September and October. We propose—

they are, at the moment, along the side of the hearing room, and the entries on those charts, at this point, are covered.

We would propose that in the course of the trial that those charts be permitted to be placed on the easel, and that as witnesses testify and evidence comes in in support of the entries on those charts, that those items be uncovered on the chart. We do not propose to leave the charts sitting up there throughout the trial, just in conjunction with the testimony of the particular witness or series of witnesses who will provide evidence to the committee pertaining to the entries on the charts.

We have, in conjunction with that, provided or are prepared to provide to the members of the committee small versions, 8½-by-11 versions, of those charts for placement in the volumes that the members of the committee have received which have all of the exhibits which will ultimately be proposed to be moved into evidence.

In addition, there is what I would call the master chronology chart. At the moment, it is folded up behind the chart you see on the side of the room. What we would propose is that we would anticipate three times in the course of the trial after witnesses have testified and pertinent documents have come in, that we be able to produce that chart, and uncover the items which have been testified to and are supported by the testimony of a witness, or in some instances—indeed, in many instances, these are supported by documentary evidence—telephone calls, airplane travel, and the like.

I would also note that in the vast majority of instances, the facts that are represented on these charts are not really a matter of serious dispute. As I say, many of them are phone calls, airline travel, and things of that nature, meetings.

Again, we have prepared for the use of the members of the committee smaller versions, 8½-by-11, of the master chronology, which we would ask be placed in your exhibit books, which each member has, in anticipation as the evidence comes in.

One other matter. A portion of the evidence which the House will present will consist of various tape recordings. You have heard that the FBI undercover agent, Mr. Rico, was wearing what was called a Nagra body recorder in his encounters with Mr. Borders. You have also heard reference to court-authorized wiretaps that were placed on Mr. Borders' telephones, and various telephone conversations were recorded.

We intend to play those tapes for you, and that is one of the reasons why you have the headphones, and the FBI has set up the systems so that we can listen to those tapes if anybody wants that kind of amplification.

Those tapes are tapes of real-life events, and accordingly, a lot of dead time occurs on that tape. People are standing around waiting for somebody to show up. They walk up and they go in an elevator. There is a tremendous amount of time that is just—nothing very pertinent happens. You have been supplied with the entire tape. Judge Hastings and his counsel have been supplied with the entire tape.

Given the time limitations that have been placed on both sides regarding the production of evidence, what we would propose is to play for you the relevant portions or what we deem to be the relevant portions of the tape.

If Judge Hastings, for some reason, feels that that should be supplemented with more material because he feels, for some reason, it is out of context, he of course would be free to do so. But, we do not, frankly, wish to use up our time for 10 or 15 minutes while we listen to someone standing around in a hallway waiting for Mr. Borders to show up, and indeed, something like that actually happens on one of the tapes.

Those are the preliminary matters which we would wish to raise at this time.

The CHAIRMAN. Mr. Anderson, would you like to respond on any of those matters or do you have other procedural matters we need to consider before beginning to hear from witnesses?

Mr. ANDERSON. Yes, if the Chair does not mind, I understand the tradition is to sit in the courtroom. It is not that way in Florida, so I would prefer to stand.

On a witness order, we will certainly apprise the House as we make those decisions. In part, we have to see how the deck begins to shuffle out here, and when people are available. I am empathetic with Mr. Borders, and I will surely give the House managers more notice than we had in the House hearings.

On the question of the charts, I think they are troubling, and I really must admit I am not quite sure at this point how to handle it. I recognize that is a considerable investment. Indeed, it is a vastly expanded version of the electronic charts that Mr. Wiengarten had the FBI prepare for the 1983 trial.

There is a question here, which is committed to the discretion of the Chair and the committee, and my research indicates that you would not be reversed in court, let alone the Senate, whichever way you went.

I think those charts are distorted, and they are distorted in several ways. They take out of context and juxtapose phone calls and things like that as if it is a "master chronology." It is not. There is, for example, on the chart, to tip it, an indication that Judge Hastings called Mr. Borders on February 20, 1981, and that happens to coincide with an event in the *Romano* case.

The chart does not reflect that the National Bar Association and its Judicial Council had scheduled a joint meeting in Miami Beach on February 26 through March 1, that Bill Borders was the President of the National Bar Association, and Judge Hastings was scheduled to be the keynote speaker. The only thing that is surprising is that they can only find the one call. So, if you are calling this a master chronology, it is a master chronology that selectively marshals data in the direction the House would have it.

So, too, it is an incomplete marshaling of the data, through no fault of Judge Hastings. There is only incomplete data, namely what the prosecutors got in 1981.

Southern Bell, for reasons that are totally unclear to me, has apparently an unlimited record retention policy. They can tell you who called whom, no matter how far you want to go back in south Florida. Chesapeake and Potomac here in DC does not. They have a two-year record retention policy. So, by the time anyone got around to going to see if we could document Mr. Borders' phone contacts, or more importantly Mr. Nesline's and Mr. Dredge's from

Washington, the records were gone. We have a similar problem with L'Enfant Plaza.

If you look at the chart, it looks as though the calls only went in one direction from January through May, from Judge Hastings to Mr. Borders. It is inconceivable that they did not go both ways, but eight years after the fact, it is impossible to reconstruct that data. So, you are looking at not only an incomplete presentation of the data that is available, but you are looking at a chart based upon what is incomplete data. Columbia, South Carolina—the telephone company that serves out there also has a record retention policy.

It is clear, and Mr. Bryant has indicated, that Hemphill Pride is a critical character. He was released from prison in March. Mr. Pride will tell you that Mr. Borders and Judge Hastings were among his closest friends and advisors. There have to have been calls emanating from Columbia, South Carolina. They are not in the chart. They cannot be in the chart. The records do not exist.

I have two thoughts; given the investment that has gone into that art work, I have two thoughts. First, if they are to be displayed during these hearings, I would be vastly more comfortable if they were displayed, if that is possible, so they are not picked up on the Senators' TV monitors until a final decision has been made.

On that basis, I would then ask the committee to reserve, until it knows what is on the charts and what is not on the charts, a final decision as to whether the charts or the little reproductions should go into the bound volumes that ultimately will be distributed to the Senators or should then be shot by the video cameras so it will be in the record.

I do not want to attempt to make this committee make a decision when it does not know what is behind all those little things because it might be fun. But, I do want not only to occasionally challenge and chide the charters as it is unfolded, but an opportunity to present our evidence of the problems in the charts so the committee can make a final decision. Is this the kind of thing that will, in fact, usefully aid the Senate?

Indeed, by the time—if we find the resources, we may mock up a little teeny chart of our own which would correct it. I would simply ask the committee to reserve it, and instruct that the display not be put on the main video record of this proceeding until such time as the committee has seen the chart and has heard the evidence and had an opportunity to rule.

We are going to have some problems with tapes and transcripts. I have no particular interest in seeing the House waste their valuable time, your valuable time, or frankly my valuable time listening to the sound of airplanes fly over Miami International Airport.

I think I have made it fairly clear in my pretrial statement that we do not think those transcripts are either complete or accurate, and I really do not want to have the burden placed upon me to wait until our case or to call someone back and say, "Can you play this little critical passage."

I am perfectly willing to work with the managers. There is, for example on the—I think it may be more than a 15-minute delay in the one tape where people are waiting around. There is a little teeny passage that is not in the transcript that occurs at one point, which I think the committee should hear in context. I think if we describe what has gone before, pick up the contacts, we may be able to do something. It may be a little bit messy, but we will work on that.

I have made clear my objection to the transcripts. I am not sure we should deal with that until we have heard a couple of tapes and the committee has a sense of what I am talking about.

Our proposal in the pretrial statement is simply that the official reporters be instructed to transcribe, without reference to preprinted transcripts by either side or any expert, what it is they hear for inclusion in the record as if it were said here. It will then enjoy the same status and accuracy as anything else that these very accurate and fine official reporters include in the record.

The traditional problem with using transcripts at a trial is that the jury is customarily permitted to use them as an aid to listening, but instructed that what they hear controls. Then, the transcripts are taken away from the jury so that the status of recorded evidence has no better status than live presented evidence. The jury retires, and it deliberates.

I recognize that not all the Senators may hear all of the testimony. They certainly will not hear it live, but I would think it would be grossly unfair to take transcripts and elevate them to a special status of accuracy of these recordings, and I think they should have the same status, at best, as the testimony that will be transcribed and inserted in the record.

That was my suggestion. Again, I had not intended to push it this morning. I thought we might wait until you had a tape and a transcript or two, and you would be able to assess this in context.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. At this point, I would propose that we recess for 20 or 30 minutes so that the committee can discuss these procedural matters and anything else that we feel should be considered before we start hearing testimony from witnesses. We will try to return in 20 to 30 minutes if we can get our work done in that time.

The committee stands in recess.

[Brief recess.]

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The CHAIRMAN. The committee will come to order. This session will commence again.

At this point, the House can go ahead and call their first witness—the House managers.

Mr. BRYANT. Mr. Chairman, at this time we will call James Deichert, and the member of the manager's panel that will conduct direct examination is John Conyers.

The CHAIRMAN. Before we swear the witness, let me just indicate to both the House managers and the counsel for Judge Hastings that our judgement on the charts is that if they are used by the House, we will consider objections that are raised at the time and as they are presented, and will rule on those at the time. But we will not, as a blanket matter, exclude the use of charts.

Would you please stand to be sworn?

Do you, James Deichert, swear that the evidence you shall give in the case now pending before the United States and Judge Alcee L. Hastings shall be the truth, the whole truth, and nothing but the truth so help you God?

Mr. DEICHERT. Yes, sir, I do.

The CHAIRMAN. Please be seated.

Proceed.

Mr. CONYERS. Mr. Chairman, Mr. Vice Chairman, members of the committee.

Witness, would you give your name, please?

TESTIMONY OF JAMES DEICHERT

DIRECT EXAMINATION

Mr. DEICHERT. Yes, sir; James Deichert.

Mr. CONYERS. And what is your present position?

Mr. DEICHERT. I am the attorney in charge of the Atlanta Organized Crime Strike Force of the United States Department of Justice.

Mr. CONYERS. And would you please describe the function of the Strike Force?

Mr. DEICHERT. Yes, sir. The Strike Force is a prosecuting team under the Justice Department's Organized Crime Section. We work with investigators to investigate and then prosecute organized crime and labor racketeers.

Mr. CONYERS. What is the relationship between the Atlanta and the Miami Strike Force offices?

Mr. DEICHERT. We are a suboffice of the Miami office. That is the parent office.

Mr. CONYERS. How long have you served in that position?

Mr. DEICHERT. In the Department of Justice, for 17 years; in the Atlanta field office, 12 years.

Mr. CONYERS. In your job at the Strike Force, did there come a time when you handled a case entitled *United States* v. *Thomas Romano and Frank Romano*?

Mr. DEICHERT. Yes, sir.

Mr. CONYERS. What role did you play in that case?

Mr. DEICHERT. Beginning in early 1977, I became involved in working on the investigation of the case. This case was subsequently moved from New Jersey to Miami, and from then on, I was involved in presenting the case of the United States grand jury in Miami, which ultimately indicted the Romanos, and then I was involved pretrial in the case and I was the Government's counsel at trial, and I became also involved in some aspects of the appellate procedure.

Mr. **Conyers**. Well, I have in my hand House Exhibit 2, which has been marked for identification. I would like to show it to you, and have you identify it for the committee.

Mr. **Deichert**. Yes, sir, I have seen that before.

The **Chairman**. It is a copy of the docket sheet from *United States* v. *Romano*, is it not?

Mr. **Deichert**. Yes, sir, that is correct.

Mr. **Conyers**. What is a docket sheet?

Mr. **Deichert**. A docket sheet is a document maintained by the clerk's office in the United States District Court on any criminal case—in this instance—which is indicted. It is a chronological listing of every significant piece of paper that is presented and filed in the court. It is also a chronological record of every significant event that occurs—for example trial days, arguments, things of that sort. So, it is a chronology.

Mr. **Conyers**. Mr. Chairman, I would ask that House Exhibit 2 be admitted into evidence at this time.

The **Chairman**. Without objection it will be admitted.

[House Exhibit No. 2 was admitted into evidence.]

Mr. **Conyers**. With your permission, I would like to leave the docket sheet with the witness for the next several questions that follow.

Now, referring to the docket sheet, who represented the Romanos in their criminal case?

Mr. **Deichert**. The Romanos had several attorneys. One of the earlier sets of attorneys, Mr. Josephsburg and another gentleman right after the indictment. Then they had a Joseph Varen, Esquire. He was substituted out, and Marshal Curran, Esquire, from Ft. Lauderdale came into the case, tried the case, and subsequent to the trial, Neal Sonnett made an appearance and represented the defendants as well.

Mr. **Conyers**. In post-trial matters?

Mr. **Deichert**. Yes, sir, Mr. Sonnett in post-trial matters.

Mr. **Conyers**. Now, at any time did an attorney named William Borders participate in the case?

Mr. **Deichert**. No, sir. He neither participated nor ever filed a notice of appearance as counsel in *Romano*.

Mr. **Conyers**. Thank you.

Mr. Chairman, I would like to offer into evidence at this time the following stipulations numbered 6, 7, and 8.

The **Chairman**. These are items 6, 7, and 8 in the matters that could be treated as evidence of fact prepared by the committee staff?

Mr. **Conyers**. Yes, that is correct.

The **Chairman**. Is there objection?

Mr. **Anderson**. Not to 6, 7, and 8, no sir.

The **Chairman**. They will be admitted into evidence.

[Stipulations 6, 7, and 8 were received in evidence.]

Mr. CONYERS. If I may, Mr. Chairman, I will now read into the record those stipulations.

6: The criminal case of *The United States* v. *Romano,* Criminal Number 78-364, was assigned to Judge Hastings on October 24, 1979.

Stipulation 7: The *Romano* case was based on a 21-count indictment of two brothers, Thomas and Frank Romano. The charges against the defendants included conducting an enterprise through a pattern of racketeering activity, investing racketeering income into a legitimate enterprise, theft and embezzlement from an employee's benefit plan, wire fraud, mail fraud, and income tax evasion. The charges were brought under the Racketeer Influenced and Corrupt Organization statute, commonly known as RICO, which required under certain circumstances the forfeiture of property illegally obtained.

Stipulation 8: In December 1980, Thomas and Frank Romano were tried and convicted by a jury with Judge Hastings presiding.

Now, what was the date that the jury returned a verdict of guilty against the Romanos?

Mr. DEICHERT. Twenty-third of December, 1980.

Mr. CONYERS. And as has been stipulated, the indictment included charges under RICO, and I would like to ask you now what penalties does the RICO law prescribe?

Mr. DEICHERT. RICO provides for imprisonment and fine and forfeiture to the United States of various types of property interests.

Mr. CONYERS. And what is the nature of a forfeiture sanction under RICO law?

Mr. DEICHERT. At that time, any interest which a defendant had acquired or maintained through a pattern of racketeering activity, if he were convicted, could be forfeited to the United States.

Mr. CONYERS. And were the Romanos convicted on the RICO counts of their indictment?

Mr. DEICHERT. Yes, they were convicted on all 21 counts of the indictment.

Mr. CONYERS. During the course of the trial, was there also evidence introduced or proffered to Judge Hastings that pertained to other examples of bribery or payoff schemes in which the Romanos were previously involved?

Mr. DEICHERT. Yes, sir, there was. The United States offered a proffer to the court, a summary of evidence which we requested Judge Hastings to rule on outside the presence of the jury, and the nature of the proffer was that we were offering similar proof to show that the Romanos had corrupt or bribe-type of intentions on earlier occasions, and this would shed some light on their actions and their motivations when they did these actions during the time period that was encompassed by the indictment.

The proffer consisted of a witness that the Department of Justice had interviewed and presented to a Federal Grand Jury who was an accountant from Miami. The gentleman's name was Ralph Simonette. Mr. Simonette had a conversation with Thomas Romano about the way that Mr. Romano conducted his business.

Mr. ANDERSON. Objection at that point, Your Honor. This is going a bit—I am trying to be very tolerant, but this witness is telling us what an accountant had as a conversation with Mr.

Romano. That, it seems to me, goes beyond the question, which simply was information proffered concerning other bribes.

Mr. CONYERS. Well, I will ask the question, then, what was in the proffer that was presented to Judge Hastings?

Mr. DEICHERT. The proffer consisted of a summary of the conversation that Mr. Simonette had with Mr. Romano.

Mr. CONYERS. And what was that?

Mr. DEICHERT. The proffer that I made to the judge was that Thomas Romano indicated that he had high travel and expenses on building contracts that he had worked on in the past, and the reason for that was to generate cash to be used to pay off or bribe building inspectors.

He also indicated that he padded or inflated construction loan draws, and the purpose of that was to accelerate the payment of funds on financial agreements that he had with construction lenders.

Mr. CONYERS. Were there any other instances?

Mr. DEICHERT. The third part of the proffer I indicated to Judge Hastings as part of the Government's offer of proof that Thomas Romano had told the accountant that he had recreational leases which were property of his corporation, that he was willing to inflate the price of those assets, and then after the assets were sold, he would be willing to kick back the difference between the real value and the value paid to a person under the table. He was willing to kick back money—I think the term was called green—and made that proffer to the judge summarizing what Mr. Simonette would have testified to had he been called by the Department of Justice.

Mr. CONYERS. And that was all in the course of your responsibilities in this trial, was it not?

Mr. DEICHERT. Yes, sir, it was.

Mr. CONYERS. And was Judge Hastings presiding when that evidence was offered?

Mr. DEICHERT. Yes, he presided at the proffer, and then we had some argument on the case. At least on two occasions, we had some argument, and he ruled against the admission of the proof.

Mr. CONYERS. Now, what was the amount of the fraud that the Romanos were prosecuted for?

Mr. DEICHERT. Approximately $1.2 million.

Mr. CONYERS. Was there evidence presented to Judge Hastings which indicated that the Romanos had a lot of cash on hand?

Mr. DEICHERT. Yes. We presented testimony which indicated that we could only trace a fraction of the $1.2 million. The Government can only really account for about a fourth of that.

The judge had heard testimony that the Romanos engaged in a pattern of cashing $540,000 in checks made out to fictitious persons, that they accumulated hundred-dollar bills in a safety deposit box in excess of a half-a-million dollars.

About a year-and-a-half or two years prior to the trial, we had seized $110,000 in hundred-dollar bills from a safety deposit box, and we had to return that money to the defendants because it—on a legal point.

The defendants also—the Judge heard testimony—had received fraudulent tax refunds from the IRS approximately a year or two years before trial in excess of $120,000.

Mr. CONYERS. So there was little doubt in his or anyone else's mind that knew of this that the Romanos were possessed of a lot of cash by virtue of this alone.

Mr. ANDERSON. Objection. Mr. Chairman, it is both leading and it calls for little doubt of what was in someone else's mind. I do not mean to be overly strict here, but that question goes beyond the ken.

Mr. CONYERS. I will withdraw that, Mr. Chairman.

The CHAIRMAN. Counsel will restate the question or withdraw it.

Mr. CONYERS. I will withdraw the question.

Following the conviction of the Romanos by the jury, were there any further evidentiary proceedings?

Mr. DEICHERT. Yes, we had forfeiture proceedings which we presented evidence, and the defendant had the opportunity to present evidence to the judge sitting alone as a trier of fact after the defendants had been convicted, and these proceedings concerned the forfeiture aspects of the indictment.

Mr. CONYERS. Mr. Chairman, I would like now to offer a number of stipulations numbered 11, 12, 14, 270, 271, and 15.

The CHAIRMAN. Is there objection to these particular stipulations?

Mr. ANDERSON. No, Mr. Chairman.

Senator BRYAN. Could counsel repeat?

The CHAIRMAN. Would you repeat the numbers of the ones you are offering in evidence?

Mr. CONYERS. Yes, Mr. Chairman, numbers 11, 12, 14, 270, 271, and 15.

The CHAIRMAN. Those will be admitted.

[Stipulation Nos. 11, 12, 14, 270, 271, and 15 were received in evidence.]

Mr. CONYERS. Thank you. I will now read these into the record.

11: That Thomas and Frank Romano waive their right to a jury on the forfeiture matter.

12: Following the conviction of Thomas and Frank Romano, Judge Hastings held hearings on December 30, 1980, February 20, 1981, to determine whether certain financial interests of the Romanos should be forfeited under RICO.

14: On February 20, 1981, Judge Hastings reserved ruling on the forfeiture in the *Romano* case, requested that the parties make further submissions, and stated that he would schedule the sentencing after he had received the submissions by the party and the pre-sentence investigation report.

270: On February 12, 1981, the non-jury trial of the forfeiture issue in the Romano trial was concluded with ruling reserved.

271: By April 8, 1981, the defendants and the government had filed memoranda on the forfeiture issue in the *Romano* case.

15: On April 23, 1981, one of Judge Hastings' law clerks, Mr. Jeffrey Miller, informed James Deichert, the witness, the Assistant United States Attorney in the *Romano* case, that the sentencing in the *Romano* case would be held on May 11, 1981.

Now did you confirm in writing your conversation with Mr. Miller regarding the May 11th sentencing date?

Mr. **Deichert**. Yes, sir. I wrote a letter to Judge Hastings, with carbon copies to defense counsel, and the clerk of the court.

Mr. **Conyers**. Well, let me show you House Exhibit 3 and see if you can identify it.

Mr. **Deichert**. Yes, sir. That is a copy of the April 23rd letter I wrote to Judge Hastings.

Mr. **Conyers**. Thank you. Mr. Chairman, I would ask that House Exhibit 3 be admitted into evidence at this time.

Mr. **Anderson**. No objection.

The **Chairman**. It will be admitted.

[The document referred to was marked House Exhibit No. 3 and was received in evidence.]

Mr. **Conyers**. And Mr. Chairman, I would like also to offer into evidence at this time Stipulation Number 17.

The **Chairman**. Is there objection to Stipulation 17?

Mr. **Anderson**. No, Mr. Chairman.

The **Chairman**. It will be admitted as well.

[Stipulation No. 17 was received in evidence.]

Mr. **Conyers**. Thank you. And if I may now please read into the record this Stipulation Number 17.

"On May 4th, 1981, Judge Hastings entered an order in the *Romano* case requiring Thomas and Frank Romano to forfeit a total of $1,162,016 to the United States."

Now how did that order compare with the position that the Government had urged in the case?

Mr. **Deichert**. It was identical. I had prepared as an accommodation to the court a letter—or rather, an order, pardon me—an order setting out the forfeiture and Judge Hastings endorsed the order adopting the Government's recommendations, in total.

Mr. **Conyers**. With respect to the hearing set for May 11th, what matters were to be decided?

Mr. **Deichert**. The judge had scheduled oral arguments on the defendants' outstanding motion for a new trial. He was also scheduled to hear argument on the defendants' motion for a judgment of acquittal, and depending on how those—if he ruled in the Government's favor on those, he would then sentence the defendants as well.

Mr. **Conyers**. Was Mr. Neal Sonnett representing the Romanos in the criminal case at this point?

Mr. **Deichert**. Yes, sir. He was.

Mr. **Conyers**. Mr. Chairman, I would like to offer into evidence at this time Stipulation Number 13.

Mr. **Anderson**. No objection.

The **Chairman**. It was admitted.

[Stipulation No. 13 was received in evidence.]

Mr. **Conyers**. And if it pleases the Chair, I would like to read into the record the Stipulation Number 13.

"On February 17, 1981, Neal Sonnett entered his appearance on behalf of Thomas and Frank Romano as additional counsel in the case then pending before Judge Hastings."

Now what happened on May 11?

Mr. **Deichert**. I arrived in Fort Lauderdale, met with Mr. Sonnett in the hallway outside Judge Hastings' courtroom in Fort Lauderdale, and he told me for the first time that he intended to petition the court for a continuance, and gave me some of the reasons why.

I told him I was adamantly opposed to it, and we should argue it to the judge in the chamber—in the courtroom.

Mr. **Conyers**. Was this discussion referred to in the May 11th hearing?

Mr. **Deichert**. Yes. Mr. Sonnett alluded to it in some of his remarks as to our conversation, and then he went on to indicate the reasons to the court.

Mr. **Conyers**. May I show you House Exhibit 4 and ask if you can identify it.

Mr. **Deichert**. Yes, sir. This is one volume of the record of appeal in the *Romano* case. It's the transcript of the proceedings on May the 11th, 1981.

Mr. **Conyers**. And is your discussion with Mr. Sonnett referred to in the transcript?

Mr. **Deichert**. He makes reference to it. He does not detail it but he refers to that fact.

Mr. **Conyers**. Had Mr. Sonnett advised you beforehand that he would request a postponement of the hearing?

Mr. **Deichert**. No. He had not. This was a Monday, I believe, afternoon. I had traveled down from Atlanta the previous day and he had not contacted me the week before, had not tried to contact me that day.

Mr. **Conyers**. Is notice required for a motion to continue?

Mr. **Deichert**. Yes. I believe the local rules required opposing counsel, which would have been the Government, to be notified, as well as sometimes a formal motion, but the court should have been advised in advance.

Mr. **Conyers**. Now what position did you take with respect to the motion for a continuance;

Mr. **Deichert**. I opposed it and I told Judge Hastings the reasons why I opposed it.

Mr. **Conyers**. Had you been properly notified, would you have agreed to it;

Mr. **Deichert**. No, sir. I would not.

Mr. **Conyers**. On what grounds did you oppose the motion for a continuance?

Mr. **Deichert**. The defendants had been convicted in December 1980. Over five months have now passed. They had made application in the form of written motions to the court on various—the post-trial motions, the new trial motion, the judgment of acquittal.

Mr. Sonnett had been counsel since some time in February. He was aware of those positions. Mr. Sonnett argued several additional points. I opposed those as being either not germane to the issue or not of any consequence, and argued the fact that we had had what seemed to be interminable delay in the case, and asked the court to rule on the matters then.

Mr. **Conyers**. And how did the judge handle it?

Mr. **Deichert**. The judge, over the Government's objection, continued the case.

Mr. Conyers. Is this argument on the motion for a continuance, and Judge Hastings' oral ruling reflected in Exhibit 4, the transcript of the May 11th hearing?

Mr. Deichert. Yes, sir. That is correct.

Mr. Conyers. All right. Mr. Chairman, I now ask that House Exhibit 4 be admitted into evidence, and I would note that House Exhibit 1, the House Exhibit I have shown Mr. Deichert, and which has been shown to Mr. Anderson, is the original transcript rather than the copy originally included in the House Exhibit binders.

Mr. Anderson. I appreciate the manager's courtesy in correcting it, and there is no objection to its admission.

Mr. Conyers. Thank you.

The **Chairman.** It will be admitted.

[The document referred to was marked House Exhibit No. 4 and was received in evidence.]

Mr. Conyers. Mr. Chairman, I would now like to offer into evidence, at this time, Stipulation Number 19.

The **Chairman.** Is there objection to Stipulation 19?

Mr. Anderson. No, Mr. Chairman.

The **Chairman.** It will be admitted.

[Stipulation No. 19 was received in evidence.]

Mr. Conyers. And with your permission, I will read it into the record.

"On May 11, 1981, Judge Hastings continued the sentencing of Thomas and Frank Romano to a date to be chosen by the parties, subject to the court's schedule."

At some point following the May 11, 1981 hearing, did you receive an order rescheduling the hearing for final argument on all pending matters in the *Romano* case?

Mr. Deichert. Yes, sir. Some time in early May—or I am sorry, I withdraw that. Sometime in early June 1981, I received Judge Hastings' order dated—I think it was the 1st of June—which set out a briefing schedule for the parties to follow, and then also indicated when oral argument would be held, and also set a time and date for sentencing, all on July 8, 1981.

Mr. Conyers. Thank you. Referring now to Exhibit 2, the docket sheet, does that show when that order was mailed out and what the new date for our hearing was?

Mr. Deichert. The docket indicates that the order was signed on the 1st of June. There are some abbreviations. I am not sure if it indicates when it was mailed, but I recall receiving it shortly thereafter.

Mr. Conyers. And was a hearing date set?

Mr. Deichert. Yes. The docket sheet indicates July 8, 1981 at 10:00 a.m.

Mr. Conyers. And I would like now to offer, Mr. Chairman, into evidence at this time Stipulation Number 20.

The **Chairman.** Is there objection?

Mr. Anderson. No.

The **Chairman.** It will be admitted.

[Stipulation No. 20 was received in evidence.]

Mr. Conyers. And reading the stipulation: "On June 5, 1981, Thomas and Frank Romano filed a motion for reconsideration of the May 4, 1981 forfeiture order issued by Judge Hastings."

Now what, then, were the pending matters before the court at the July 8th hearing?

Mr. DEICHERT. The same two motions as before: a motion for a new trial as well as a motion for a judgment of acquittal. The court also indicated, now, that he would hear argument on the defendants' motion to reconsider the $1.2 million approximate forfeiture order that the Government had previously won, plus the sentencing.

Mr. CONYERS. So a motion for a new trial, judgment for acquittal, and a motion for reconsideration of the forfeiture decision?

Mr. DEICHERT. Yes, sir. Plus sentencing.

Mr. CONYERS. Plus sentencing. And on July 8th, 1981, did the court rule on all of those pending matters?

Mr. DEICHERT. Yes, sir. The judge denied each of the defendants' motions, ruling in favor of the United States on all of them, and sentenced the defendants as well.

Mr. CONYERS. All right. Mr. Chairman, I would like to now offer into evidence stipulations numbered 25 and 26.

The CHAIRMAN. Is there objection?

Mr. ANDERSON. No, sir.

The CHAIRMAN. They will be admitted.

[Stipulation Nos. 25 and 26 were received in evidence.]

Mr. CONYERS. Thank you. And reading them into the record, stipulation 25: "On July 8th, 1981, Judge Hastings sentenced each of the Romanos to three years imprisonment to be followed by a three-year period of probation, and advised them of their rights to appeal."

Stipulation 26. "The sentences imposed on Thomas and Frank Romano on July 8th, 1981 were consistent with the recommendations of the United States Probation Office."

What sentence, Mr. Deichert, had you asked for?

Mr. DEICHERT. I asked for a term of incarceration.

Mr. CONYERS. Did you expect the judge to sentence the Romanos to three years in prison?

Mr. ANDERSON. Objection. Relevancy. Mr. Chairman, I would just note, originally, I think we went through a very extended stipulation process because we were going to save time with it. I have not caught the time-saving coming out yet.

But Mr. Deichert's expectations strike me as a matter of large irrelevance and improper.

The CHAIRMAN. The witness will be allowed to answer, if he has an opinion on it.

Mr. DEICHERT. I was surprised that he sentenced them to three years incarceration.

Mr. CONYERS. And why were you surprised?

Mr. ANDERSON. The same objection, relevance. Why Mr. Deichert was surprised, it does not strike me bears on the issue in this case. We are moving into a fairly central area in that the question is was Judge Hastings surprised? What was his motivation?

Whether Mr. Deichert was surprised, whether another prosecutor would have been surprised, this witness's state of mind is not at issue in this case. This is speculation and it is improper.

Mr. CONYERS. Mr. Chairman.

The CHAIRMAN. Yes, Representative Conyers?

Mr. CONYERS. Might I just point out, that as an experienced prosecutor, this witness would be expected to have a depth of knowledge about these matters, and his opinion as an expert would be relevant to this hearing.

The CHAIRMAN. The objection will be overruled. The witness can go ahead and answer, and express his opinion.

Mr. DEICHERT. The reason I was surprised: The defendants were both in their sixties. One was, I think, 62. The other was about 65. They had never had any criminal convictions previously. One defendant had a history of heart attacks. He had at least three coronary incidents during the course of time that the matter was pending in the district court, after he had been indicted.

And for all those reasons, I was surprised that he gave them three years.

Mr. CONYERS. Well, what sentence had counsel for the defendants asked?

Mr. DEICHERT. Had requested probation.

Mr. CONYERS. Now in respect to this subject matter, had you and Judge Hastings ever talked about the sentencing of criminals in these circumstances?

Have there ever been conversations between you and him on the subject of sentencing?

Mr. DEICHERT. Yes. Around that point in time——

Mr. ANDERSON. Mr. Chairman, if we could get when, exactly, and who was present at these conversations, it would help me understanding what is going on, and might help the Senate.

The CHAIRMAN. The witness can continue to respond, and if counsel for respondent wishes to pin down more precisely any fact, he can do that in cross examination. Go ahead and respond.

Mr. DEICHERT. It was in the spring, or early summer of 1981, I spoke to Judge Hastings, informally. He asked me what was I doing in Atlanta, what kind of cases had I been involved with, and I had told him I was involved in a rather large methaqualone or quaalude case in the middle district of Georgia, 800,000 units of drugs.

And he made a remark to the effect that that was not all that large. They had a 2-million unit, or 1.5-million unit case that he had tried, and said that the defendants had received several years in prison.

I recall, at the time, I thought it was an incredibly light sentence for that volume of drugs.

Mr. CONYERS. What happened in the case that you had handled, in terms of the sentencing?

Mr. DEICHERT. The defendant received 20 years in prison.

Mr. CONYERS. Now with respect to the Romanos' motion for reconsideration, what relief did the defendants seek?

Mr. DEICHERT. The defendants sought to overturn the order that Judge Hastings had entered on the 4th of May which gave approximately $1.2 million in forfeiture to the Government.

Mr. CONYERS. And did the parties subject further briefs on the forfeiture issue before the July 8th hearing?

Mr. DEICHERT. Yes. The defendants submitted a brief, I submitted a brief, and then they submitted a reply brief in answer to my pleading.

Mr. CONYERS. Thank you. Were there any developments in the case law interpreting the RICO statute as it affected the motion for reconsideration of forfeiture from the time the motion was filed on June 5th until the hearing on July 8, 1981?

Mr. DEICHERT. Yes, sir. The United States Supreme Court issued a ruling on June 17th called *United States* v. *Turquette*, and there was also a case which came out of the Fifth Circuit Court of Appeals, *United States* v. *Martino*, on June 19, 1981.

The CHAIRMAN. Representative Conyers, we had previously advised Senators and others that we would recess at noon, and begin again in the afternoon at 1:30. We will do that at this time, and you can continue with your direct examination at that time, if that is acceptable.

Mr. CONYERS. Thank you, Mr. Chairman.

Mr. BRYANT. Mr. Chairman.

The CHAIRMAN. Representative Bryant.

Mr. BRYANT. Thank you. Prior to the recess, the House would like to ask the chairman of the committee to make a decision with regard to our subsequent witnesses.

We had submitted an order of presentation which required that William Dredge be the second witness. As you know, he requires special arrangements and it had been the assumption of the committee that he would begin at 9:00 a.m. tomorrow.

Some sentiment had been expressed that we change our order and produce, as our second witness, Martha Rogers.

Inasmuch as that change would not save any significant amount of time—she will be a very brief witness—we would like to request that the committee allow us to begin tomorrow with—that is, after Mr. Deichert is finished—to begin tomorrow with Mr. Dredge and stick with our original proposed order of witnesses, and have Mrs. Rogers come after Mr. Dredge rather than change it.

We would like, if possible, to be able to notify the witness of your decision about that during the lunch hour.

The CHAIRMAN. Mr. Anderson, did you wish to make any statement?

Mr. ANDERSON. Mr. Chairman, I certainly leave to the House the order in which they wish to present their witness, and their management of their time.

I would bring to the committee's attention, that I understand that special arrangements may be made for Mr. Dredge. We do reserve the right to protest those arrangements and would like to be heard before he testifies, on that.

But other than that, I have no problem with the time management, and if the House wishes to stick to its order, I think that they should be allowed to.

The CHAIRMAN. We will defer any decision on this until after the lunch hour, and we will advise both counsel of our position after lunch.

The committee is in recess.

[Whereupon, at 12:06 p.m., the committee recessed, to reconvene at 1:30 p.m., this same day.]

AFTERNOON SESSION

The **Chairman**. The committee will reconvene.

It would be our hope that the House would continue with its first witness with the direct examination. Are you prepared to do that?

Mr. **Bryant**. Mr. Chairman, we are awaiting the arrival of Chairman Conyers.

The **Chairman**. OK. Is there anybody else in the House side, any of the other managers who could continue with that direct examination?

Mr. **Bryant**. Mr. Deichert, at the conclusion of the session prior to the lunch recess, you had testified that the Fifth Circuit had handed down an opinion in the case of the *United States* v. *Martino*. At this time I would show you House Exhibit 5 and ask you to identify what it is.

Mr. **Deichert**. Yes, sir. This is a portion of what they call a slip opinion that was handed down by the Fifth Circuit.

Mr. **Bryant**. In what case?

Mr. **Deichert**. I'm sorry. Excuse me.

In *United States* v. *Martino*.

Mr. **Bryant**. Mr. Deichert, would you tell the committee what a slip opinion is?

Mr. **Deichert**. A slip opinion is each individual case that's published by a Federal Court is put out in booklet form, one case per booklet. And they are sent out on a periodic basis usually from the Fifth Circuit or any of the Court of Appeals usually send out a batch each week. And then after several weeks, if there are no corrections, then they are compiled with all of the other reports from either the Court of Appeals or the district court, depending on the issuing court. And they are put into a bound volume which is then customarily what you see in a law library.

Mr. **Bryant**. At this time, Mr. Chairman, we would offer into evidence Exhibit 5.

The **Chairman**. Is there any objection to Exhibit 5?

Mr. **Anderson**. No, Mr. Chairman.

The **Chairman**. It will be admitted into evidence.

[The document referred to was marked House Exhibit No. 5 and was received into evidence.]

Mr. **Conyers**. Thank you, Mr. Chairman.

What was the holding of the *Martino* panel on June 19, 1981, with respect to forfeiture?

Mr. **Deichert**. The Court ruled that as a matter of first impression that the term interest, which was as used in the RICO statute, did not allow the Government to forfeit income or receipts from racketeering activity. And specifically the court stated, "We are convinced Congress did not intend to include in the forfeiture provision of Section 1963," which is the RICO forfeiture portion, "the fruits and profits obtained from a pattern of racketeering activity."

Mr. **Conyers**. Mr. Chairman, I would like to offer into evidence at this time Stipulation Number 21.

The **Chairman**. Is there any objection?

Mr. **Anderson**. No, Mr. Chairman.

The **Chairman**. Let it be admitted into evidence.

Mr. **Conyers**. Thank you.

[Stipulation No. 21 was received in evidence.]

[The stipulation is as follows:

21. On June 19, 1981, a three-judge panel of the United States Court of Appeals for the Fifth Circuit held, in *United States v. Martino*, No. 78-3611, slip. op. at 8275 (5th Cir. June 19, 1981), that: "Congress did not intend to include in the forfeiture provision of [sec.] 1963 [of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. secs. 1961 *et seq.*,] the fruits and profits obtained from a pattern of racketeering activity, and reversed in part the district court's forfeiture order which had forfeited insurance proceeds received as a result of arson. The subsequent history of the *Martino* decision is reported at 648 F.3d 367, *vacated in part sub nom.*, *United States v. Holt*, 650 F.2d 651 (1981), *cert. denied*, 456 U.S. 949 (1982), *rev'd*, 681 F.2d 952 (5th Cir. 1982) (en banc), *cert. granted*, 459 U.S. 1101 (1983), *aff'd sub nom.*, *Russello v. United States*, 464 U.S. 16 (1983).]

Mr. CONYERS. Did the district court in which Judge Hastings presided come within the jurisdiction of the circuit court that handed down *Martino*?

Mr. DEICHERT. Yes. That's correct, sir.

Mr. CONYERS. And what did that mean as far as Judge Hastings' options in the *Romano* case?

Mr. DEICHERT. As a District Court Judge, he's required to follow the precedent of the parent court. He was required to follow that as a matter of law.

Mr. CONYERS. In *Romano*, did any of the $1.2 million forfeiture arguably fall into the category of income or profits as discussed in *Martino*?

Mr. DEICHERT. Yes, sir. It did.

Mr. CONYERS. How much?

Mr. DEICHERT. Approximately $845,000 in what's called a money judgment.

Mr. CONYERS. If Judge Hastings were to follow the decision in *Martino*, then would he have to partially reverse his May 4th forfeiture order?

Mr. DEICHERT. Yes. That's correct.

Mr. CONYERS. And how much of the original $1.2 million forfeiture would be reversed if *Martino* were controlling?

Mr. DEICHERT. $845,000.

Mr. CONYERS. Now, did you bring the *Martino* decision to the attention of the Court?

Mr. DEICHERT. Yes, I did. I was working with the prosecutors in Tampa who were from the Tampa Strike Force who actually were the trial attorneys in *Martino*. And I was aware of the case and as it developed through the district court. When they told me that the opinion had been handed down, I contacted Judge Hastings' chambers, advised his law clerk of the issuance of the opinion and the fact that it may have potential impact on the *Romano* case. And I also contacted counsel for the defendants and told them the same thing.

Mr. CONYERS. And did you discuss the *Martino* case in your brief filed in opposition to the motion for reconsideration of the forfeiture order?

Mr. DEICHERT. Yes. The Government argued that in its brief.

Mr. Conyers. Did you argue that *Martino* was controlling and that Judge Hastings would have to follow its logic?

Mr. Deichert. There were two parts of the case, one that pertained to the money judgment and another that pertained to an investment in a business. We argued that the investment in the business portion was controlling. That helped the Government. We argued that the portion pertaining to the money judgment was distinguishable, in other words, that the logic of the *Martino* case and the force of law did not impact on *Romano*.

Mr. Conyers. Ultimately, was the June 19, 1981, decision with respect to forfeiture upheld?

Mr. Deichert. With respect to the money judgment, no. That was reversed by the Circuit Court of Appeals sitting as a panel as a whole.

Mr. Conyers. And that occurred at what point in time?

Mr. Deichert. Sometime during 1982.

Mr. Conyers. Now, at the time of the July 8, 1981, hearing, before Judge Hastings in *Romano,* what then was the status of *Martino*?

Mr. Deichert. It was the law of the Fifth Circuit.

Mr. Conyers. And did the attorney, Mr. Sonnett, rely on the *Martino* case?

Mr. Deichert. Yes. He referenced it extensively in his pleadings. And during the course of the oral argument he referred to it constantly when he was in argument before Judge Hastings.

Mr. Conyers. Is that part of the *Martino* slip opinion of June 18, 1981, which refers to the forfeiture issue a long one?

Mr. Deichert. No. It's approximately two-and-a-quarter, two-and-a-half pages.

Mr. Conyers. It's a relatively short one?

Mr. Deichert. Yes.

Mr. Conyers. At the hearing on July 8, 1981, did you believe that Judge Hastings was aware of the significance of the *Martino* decision in other legal developments in the area?

Mr. Deichert. Yes. Definitely.

Mr. Conyers. What leads you to believe that?

Mr. Deichert. He indicated that he had read the briefs. Mr. Sonnett read paragraphs of the case into the record in support of his arguments. Judge Hastings asked questions concerning the pivotal issue, which was before him on the ruling and how did *Martino* affect that, those, for example.

Mr. Conyers. And how long was the forfeiture issue argued on July 8th?

Mr. Deichert. About an hour.

Mr. Conyers. In the court?

Mr. Deichert. Yes, sir.

Mr. Conyers. And at the end of the hour, did Judge Hastings rule on the motion?

Mr. Deichert. Yes, he did. He denied the defendant's motion for reconsideration and he upheld the Government's forfeiture in its entirety.

Mr. Conyers. Let me show you what's been marked as Exhibit 6 and see if you can identify it.

Mr. **Deichert**. Yes, sir. I can. This is the volume of transcript, a copy of it, from the *Romano* trial pertaining to the proceedings on the 8th of July, 1981, before Judge Hastings.

Mr. **Conyers**. Is Judge Hastings' ruling on the motion to reconsider the forfeiture reflected in this transcript?

Mr. **Deichert**. Yes, sir.

Mr. **Conyers**. Then, Mr. Chairman, I would like to offer into evidence at this time House Exhibit Number 6.

The **Chairman**. Is there objection?

Mr. **Anderson**. No objection.

The **Chairman**. It will be admitted.

[The document referred to was marked Exhibit Number 6 and was received into evidence.]

Mr. **Conyers**. I would like to also offer into evidence at this time Stipulation Number 24.

The **Chairman**. Is there objection to that stipulation?

Mr. **Anderson**. No objection.

The **Chairman**. It will be admitted.

[Stipulation No. 24 was received into evidence.]

Mr. **Conyers**. If I may read that stipulation, Mr. Chairman.

At the July 8, 1981, sentencing hearing, Judge Hastings confirmed his May 4, 1981, forfeiture order stating, "I will allow the forfeitures as previously set out by the Court to be maintained and a brief order will be prepared that will recite the reasoning of the court at least insofar as the new matters that have arisen, more specifically the cases cited by counsel up to this time."

Was anything said during the course of that July 8, 1981, hearing by Judge Hastings, or anyone else in the courtroom, that led you to believe that the Judge had not yet made up his mind on the forfeiture issue?

Mr. **Deichert**. No. Definitely not.

Mr. **Conyers**. Did the Judge issue a written order or judgment with respect to the sentences imposed upon the Romanos?

Mr. **Deichert**. With respect to the sentences, that is the three years incarceration he did. I believe it was signed that day.

Mr. **Conyers**. I have here Exhibit Number 7 I would like you to identify for the committee.

Mr. **Deichert**. Yes, sir.

Those are photocopies of what's called the Judgment and Commitment Order memorializing the sentences imposed by Judge Hastings incarcerating the two Romanos.

Mr. **Conyers**. And what's the date reflected on those?

Mr. **Deichert**. July 8, 1981, the same day as the sentence.

Mr. **Conyers**. OK. And is the entry of those judgment orders reflected on the docket sheet House Exhibit Number 2?

Mr. **Deichert**. Yes, sir. It is.

Mr. **Conyers**. Did Judge Hastings also issue, as he said he would, a written order with respect to the motion for reconsideration of the forfeiture within a few days?

Mr. **Deichert**. No. He did not.

Mr. **Conyers**. Well, Mr. Chairman, I would like to offer into evidence at this time House Exhibit Number 7.

The **Chairman**. Any objection?

Mr. **Anderson**. No objection.

The CHAIRMAN. It will be admitted.

[The document referred to was marked House Exhibit No. 7 and was received into evidence.]

Mr. CONYERS. And I would like to now offer into evidence at this time Stipulation Number 27.

The CHAIRMAN. Is there objection?

Mr. ANDERSON. No objection.

The CHAIRMAN. It will be admitted.

[Stipulation No. 27 was received in evidence.]

Mr. CONYERS. Thank you.

Number 27 reads as follows, "On July 14, 1981, Thomas and Frank Romano filed notices of appeal from the final judgment and order of conviction and from the judgment of forfeiture issued from the bench on July 8, 1981."

What's the legal effect of filing a notice of appeal from a judgment of conviction in a Federal Court?

Mr. DEICHERT. Divests the Trial Court or the district court of jurisdiction and it transfers that jurisdiction to the Court of Appeals in most instances, most matters that would come before the court.

Mr. CONYERS. It would preclude then the district court from having anything further to do with this case when this occurred?

Mr. DEICHERT. On the judgment and conviction, correct.

Mr. CONYERS. On the judgment and conviction.

So that if the defendants wanted the court to consider a reduction in their sentences, what steps would they have to take?

Mr. DEICHERT. They would have had to dismiss the notice of appeal. And then they would have had to have filed a motion for reduction of sentence.

Mr. CONYERS. And if they did so, could they later reinstate their appeal from their conviction particularly if they did not get the sentence that they wanted?

Mr. DEICHERT. No. Once they withdraw it, it would be withdrawn. And that terminates it.

Mr. CONYERS. Now, returning to the other matter that was before Judge Hastings on July 8, 1981, did he eventually issue a written order with respect to the motion for reconsideration of the forfeiture?

Mr. DEICHERT. Yes. On I believe it was the 6th of October, 1981.

Mr. CONYERS. Between that time and the oral argument on July 8th, did Judge Hastings request any further briefing or a hearing on the subject of forfeiture or for that matter anything else pertaining to the *Romano* case?

Mr. DEICHERT. Nothing pertaining to the forfeiture sir, no.

Mr. CONYERS. Did you or counsel, Mr. Sonnett, submit anything further on your own initiative?

Mr. DEICHERT. No, sir. Nothing on the forfeiture.

Mr. CONYERS. OK. I want to show you House Exhibit Number 8 and see if you can identify it.

Mr. DEICHERT. Yes. It's an envelope that was addressed to me at my office in the Federal Court House in Atlanta from Judge Hastings' chambers.

Mr. CONYERS. And I have Exhibit 9 that I would like you to make the same identification, please.

Mr. **Deichert**. This is a photocopy of the order Judge Hastings indicates was filed on the 6th of October, 1981, and I recognize by my secretary's handwriting in the receipt stamp on the last page.

Mr. **Conyers**. I would ask, Mr. Chairman, that both these Exhibits, 8 and 9, be admitted into evidence.

Mr. **Anderson**. No objection.

The **Chairman**. They will both be admitted.

[The documents referred to were marked as House Exhibit 8 and House Exhibit 9 and were received in evidence.]

Mr. **Conyers**. Now, when did the October 6, 1981, order by Judge Hastings pertaining to the motion for reconsideration of the forfeiture arrive at your office?

Mr. **Deichert**. I would have to take another look at that last page. But I think it's the 7th of October, at 5:30 in the afternoon.

Mr. **Conyers**. And does the order indicate the time it arrived at your office?

Mr. **Deichert**. I think it is 5:30 p.m., the 7th of October.

Mr. **Conyers**. Does the envelope show that it was sent special delivery?

Mr. **Deichert**. Yes. That's correct.

Mr. **Conyers**. Had you ever been mailed any other matters from Judge Hastings' court in this case?

Mr. **Deichert**. Yes. Numerous notices, other types of correspondence pertaining to the trial.

Mr. **Conyers**. And were they ever mailed special delivery

Mr. **Deichert**. No, sir.

Mr. **Conyers**. Was there a time limit on when the written order in *Romano* had to be issued?

Mr. **Deichert**. No. There was not.

Mr. **Conyers**. I would like to now offer into evidence, Mr. Chairman, Stipulation Number 118.

The **Chairman**. Is there any objection?

Mr. **Anderson**. No.

The **Chairman**. It will be admitted.

[Stipulation No. 118 was received in evidence.]

Mr. **Conyers**. Thank you.

It reads, "On October 6, 1981, an order reversing the forfeiture of $845,939 of the $1,162,016 of Thomas and Frank Romano's property which had been previously ordered forfeited was signed by Judge Hastings and mailed out."

What was your reaction to the October 6, 1981, order?

Mr. **Anderson**. Objection, Your Honor.

I get the sense that there is some concern about admitting evidence. But what Mr. Deichert's reaction on October 7th, it strains me to figure out what fact of consequence in this proceeding that could be relevant to.

Mr. **Conyers**. Well, I think if you follow the line of questioning that I have, it will become very important as to what his reaction as an expert on these matters was.

The **Chairman**. The objection will be overridden and overruled. And the witness can go ahead and give his opinion or his reaction if he recalls it.

Mr. **Deichert**. Yes. I was stunned when the order reversed the forfeiture.

Mr. CONYERS. Why were you?

Mr. DEICHERT. We had no additional argument, no additional briefing. The law stood the same on the 6th of October as it had on 19th of June when *Martino* was issued and the same as when we argued it extensively before Judge Hastings on the 8th of July. Everything was identical and out of the blue he reversed himself.

Mr. CONYERS. Thank you, Mr. Deichert.

Mr. Chairman, that concludes my direct examination of the witness. And at this time I would ask that the cover for entry number 108 be removed from the October chart.

The CHAIRMAN. We do not have that chart before us at this time. Mr. Anderson, did you want to—we don't know what's behind that.

Mr. ANDERSON. What entry is it? I'm not sure I do either.

The CHAIRMAN. Could you be more precise as to what you are asking to have shown?

Mr. CONYERS. What we are trying to do is show what has been testified here. What precisely is behind 108 is not known to myself either at this time.

Mr. ANDERSON. Mr. Chairman, I got a copy of the chart, but I didn't get a copy of the numbers.

The CHAIRMAN. Oh, I see.

Mr. ANDERSON. We are all in awe.

Why don't we try one? Why don't we just take that one off and then I will tell you whether I object and we will put it back in?

Mr. CONYERS. Then I gather there is no objection raised to this chart being used for that purpose at this time? There may be an objection.

Mr. ANDERSON. I reserve the right when I see it.

The CHAIRMAN. Maybe you could bring that chart forward so we could have a—if the House managers, or somebody, would have that chart brought forward so we could see what is being uncovered?

The covering for October 6th has been removed.

Is there objection to what that discloses?

Mr. ANDERSON. So far, no. There may be. In the full chart there may be some contextual problems in whether it is complete. But that one entry, give it to them.

The CHAIRMAN. Does that complete the direct examination of Conyers?

Mr. CONYERS. Yes, it does. Thank you, Mr. Chairman.

The CHAIRMAN. Is there cross-examination of the witness?

Mr. ANDERSON. Yes, Mr. Chairman, there is.

Good afternoon, sir.

CROSS EXAMINATION

Mr. DEICHERT. Good afternoon, Mr. Anderson.

Mr. ANDERSON. Have we ever met before?

Mr. DEICHERT. Not that I am aware of.

Mr. ANDERSON. I am not either.

Now, Mr. Deichert, let me go back through and recap some of your testimony. As I understood you, you have specialized in the prosecution of racketeering and organized crimes throughout your career. Haven't you, sir?

Mr. **Deichert**. Yes, sir.

Mr. **Anderson**. And you have had considerable expertise in the investigation and prosecution of RICO cases in 1977 when you took over the *Romano* case, didn't you, sir?

Mr. **Deichert**. In 1977 I didn't, no.

Mr. **Anderson**. How long had you been out of law school?

Mr. **Deichert**. In 1972.

Mr. **Anderson**. So you had at least five years experience with the Department of Justice?

Mr. **Deichert**. Five years as a prosecutor.

Mr. **Anderson**. And that had been in racketeering and organized crime related matters, hadn't it, sir?

Mr. **Deichert**. In those types of cases, but not with the RICO statute, no.

Mr. **Anderson**. So was the *Romano* case your first case in RICO?

Mr. **Deichert**. First RICO case, right.

Mr. **Anderson**. And that case came to trial ultimately three years later in 1981?

Mr. **Deichert**. That's correct.

Mr. **Anderson**. So you had three more years of experience in RICO by that time? Am I correct in that, sir?

Mr. **Deichert**. Right.

Mr. **Anderson**. Now, the *Romano* case was the first RICO case that Judge Hastings had handled, wasn't it?

Mr. **Deichert**. That is what Judge Hastings said from the bench, yes.

Mr. **Anderson**. Did you have any reason to question that, sir?

Mr. **Deichert**. I had no basis for questioning it or not questioning it.

Mr. **Anderson**. And on May 4, 1981, Judge Hastings relied on your proposed findings with respect to the forfeiture, didn't he?

Mr. **Deichert**. He signed those. Opposing counsel also submitted their own proposals.

Mr. **Anderson**. But he adopted yours verbatim, did he not?

Mr. **Deichert**. Correct.

Mr. **Anderson**. Didn't change a word, did he?

Mr. **Deichert**. Not that I recall, no.

Mr. **Anderson**. And on July 8th, Judge Hastings imposed the sentence that the probation office had recommended exactly, didn't he?

Mr. **Deichert**. The prosecutors in Federal court do not have access to what the recommendation is so I couldn't tell you.

Mr. **Anderson**. Well, do the prosecutors in Federal court have access to recommending to the probation office what its recommendation should be? Do you submit something to the probation office saying how you think a case should be sentenced?

Mr. **Deichert**. That can be done. In this case, it wasn't done. We submitted what is called a statement of facts. Indicated we requested incarceration. I don't think I made a statement to probation asking for any specific term.

Mr. **Anderson**. Would it refresh your recollection if I could show you a copy of that report?

Mr. **Deichert**. I would have to see the report, Mr. Anderson.

Mr. **Anderson**. Mr. Chairman, this is going to happen from time to time I won't have something marked. When I am surprised and it comes up uncalled, I will try to use just refresh recollection so we don't have to put this document in evidence. Otherwise I will have to seek to mark it.

Mr. Deichert, let me show you a document that was supplied to me by the House. It's falling apart a bit, but if you could identify it? And then to save me another trip up here, if I could direct your attention to page 18?

Mr. **Deichert**. Yes, sir, I have reviewed that portion of page 18.

Mr. **Anderson**. Mr. Deichert, can you tell the committee what that document is?

Mr. **Deichert**. It appears to be a presentence investigation report prepared by the Probation Department in *United States* v. *Romano*.

Mr. **Anderson**. And having reviewed page 18, is your recollection refreshed as to your role in that presentence investigation?

Mr. **Deichert**. Yes.

Mr. **Anderson**. And did you in fact submit your views to the office that prepared that presentencing investigation?

Mr. **Deichert**. Yes.

Mr. **Anderson**. And did you in fact recommend to them that they recommend to the Judge a term of incarceration?

Mr. **Deichert**. Yes.

Mr. **Anderson**. Of the Romanos?

Mr. **Deichert**. Yes. That's what I testified.

Mr. **Anderson**. And in fact the probation office did recommend a term of incarceration to Judge Hastings, didn't they?

Mr. **Deichert**. I don't know. The prosecutor does not see what the recommendation is.

Mr. **Anderson**. But you had recommended that they do so? Well, you had at least recommended that they ask for a term of incarceration?

Mr. **Deichert**. Yes. That is what I had said previously.

Mr. **Anderson**. I was not sure whether you had indicated you had input into the probation office.

Mr. **Deichert**. Oh, no. We definitely do.

Mr. **Anderson**. And you also appeared in court, did you not, at the sentencing hearing?

Mr. **Deichert**. Yes, sir.

Mr. **Anderson**. And you argued strenuously for a term of incarceration, didn't you?

Mr. **Deichert**. Yes.

Mr. **Anderson**. And Judge Hastings did impose a term of incarceration, didn't he?

Mr. **Deichert**. Yes, sir.

Mr. **Anderson**. And in essence as he had on May 4th in entering the forfeiture order, he in essence the position you had hoped he would adopt, didn't he?

Mr. **Deichert**. I don't know if in essence or not. I asked for incarceration without any specific term. He imposed a term of three years incarceration. I don't want to—I don't know if it is incumbent upon me to characterize it or not.

Mr. ANDERSON. You indicated before you were surprised when he imposed a term of incarceration. Is that correct, sir?

Mr. DEICHERT. Yes.

Mr. ANDERSON. Would you have been surprised if he hadn't?

Mr. DEICHERT. No, I would not have.

Mr. ANDERSON. Let me come back to that.

Now, Mr. Deichert, most of the people you prosecute for racketeering and organized crimes through the strike force have large sums of money, don't they?

Mr. DEICHERT. Well, can have large sums of money or for some other reason are considered major criminal cases.

Mr. ANDERSON. But there are a substantial number of them who either have or have access to large sums of money?

Mr. DEICHERT. Correct.

Mr. ANDERSON. For example, I think you testified that you had prosecuted an 800,000 methaqualude case up in Georgia, 800,000?

Mr. DEICHERT. 800,000, correct.

Mr. ANDERSON. And did the defendants in that case have large sums of money?

Mr. DEICHERT. They never had a chance to do anything with it. We got them when they came off the landing strip in Columbia. We waited for them in Georgia, when they came down we were there waiting on them.

Mr. ANDERSON. And defendants of that type, especially if they get off the landing strip, are likely to have access to large sums of cash, aren't they?

Mr. DEICHERT. Yes. If they are successful in selling the drugs, of course.

Mr. ANDERSON. And those are exactly the kinds of persons who would ordinarily be willing to buy just about anyone to get their way, are they not?

Mr. DEICHERT. As a general proposition, I guess you could make that characterization, yes.

Mr. ANDERSON. And those are the kinds of defendants who routinely appear as defendants in major criminal cases before Federal judges, are they not?

Mr. DEICHERT. I do not know the frequency in a district like Miami, I could not—we had a case in the Southern District of Florida.

Mr. ANDERSON. Your parent office, as I think you referred to it, is the Miami Strike Force, is it not?

Mr. DEICHERT. Yes, sir.

Mr. ANDERSON. And you are aware that there is a fairly large problem in south Florida in drugs, are you not?

Mr. DEICHERT. Of course.

Mr. ANDERSON. And you are aware that both through the strike force and the United States Attorney's Office fairly large drug cases are routinely prosecuted down there, are you not?

Mr. DEICHERT. They are now. In 1981, I don't know if I could make that same statement. Times have changed.

Mr. ANDERSON. Well, you are aware that shortly after he took office, President Reagan established a drug strike force or task force, are you not?

Mr. DEICHERT. Yes.

Mr. Anderson. And you are aware that the focus of that was on south Florida, are you not?

Mr. Deichert. Yes.

Mr. Anderson. And you are aware that President Reagan was elected in 1980, are you not?

Mr. Deichert. Yes. I seem to recall that.

Mr. Anderson. Does that refresh your recollection that there may have been a drug problem down in Florida in 1980?

Mr. Deichert. I do not contest that. The question that I think you asked me, you wanted me to characterize, is how many or how much of these large drug cases come before a district judge.

They have cases running from theft from the mails to counterfeiting to all types of things. So I could not make that statement. I am not qualified to do that.

Mr. Anderson. So you are not aware—were you then aware that the United States District Court of Southern Florida had one of the heaviest criminal dockets in the nation?

Mr. Deichert. I would suppose so. I would be guessing.

Mr. Anderson. And were you aware that there was a higher concentration of complex drug cases in that court than almost any court in the nation?

Mr. Deichert. I am not in a position to debate dockets with you, Mr. Anderson.

Mr. Anderson. But, you did not discuss these matters with your parent office at Miami?

Mr. Deichert. No.

Mr. Anderson. But, in any event, large drug cases are defendants who have large sums of money and are routinely—one would expect would be willing to give bribes.

Mr. Deichert. Again, I don't know if I can make that generalization. I've tried large drug cases where, to our knowledge, no one has been bribed. I have tried drug cases with 10,000 pounds of cocaine in which no one was bribed.

Mr. Anderson. I understand there may have been no one bribed, but did you think the defendants and that person were of a character that would be unwilling to give a bribe?

Mr. Deichert. In other cases or in the *Romano*?

Mr. Anderson. In other cases. Have you criminally prosecuted racketeers who you honestly believed were racketeers who you said, "I don't think that person would ever give a bribe to a public official?"

Mr. Deichert. I don't know that I have ever really thought about it before.

Mr. Anderson. You did think about it before you came here to testify about this proffer you made to Judge Hastings, didn't you?

Mr. Deichert. I was asked questions about it, yes, sir.

Mr. Anderson. But I take it, in response to those questions, you were fairly good and clear in your recollection, today, of some things that occurred in 1980?

Mr. Deichert. I was asked questions. I have lived with this case for better or for worse for almost nine years, and I'm very clear on recollections on those, yes, sir.

Mr. Anderson. But, you haven't thought about the question of whether virtually any Federal judge of average intelligence would be aware that he was routinely having defendants before him of a kind who would be willing to pay bribes?

Mr. **Deichert**. I have really no basis for what other judges do on a general basis.

Mr. **Anderson**. But what they would perceive to be the characteristics of the defendants before them, you do not know that, either?

Mr. **Deichert**. You are asking me to generalize. If you want me to generalize, someone could be happy to bribe their way out of a theft from a Post Office case as well as they could from a contempt of Congress or any case. I don't know that I can address that with any degree of other than just speculating.

Mr. **Anderson**. I thought that there was some speculation going on earlier, but I was overruled on it, so I thought I would see if I could get some for us.

Let me return, now, to something that, perhaps, you do have a recollection more clearly on. Am I correct that on May 11, 1981, when he took the bench, Judge Hastings announced that he was ready to proceed with final argument and sentencing at that time?

Mr. **Deichert**. I would have to take a look at it. I don't remember if he announced that or if Mr. Sonnett made the request for a continuance first.

Mr. **Anderson**. Do you recall your testimony earlier this morning?

Could I ask that the witness be permitted to examine House Exhibit 4?

The **Chairman**. Please hand the witness House Exhibit 4.

Mr. **Deichert**. Yes, he indicated that he is ready to proceed.

Mr. **Anderson**. And it was Mr. Sonnett who initiated the request for a continuance at that time, was it not, sir?

Mr. **Deichert**. He made the motion, correct.

Mr. **Anderson**. And he apologized to the court as he had to you before the hearing for not having advised it in the head of time that he was going to have to do this, did he not?

Mr. **Deichert**. Yes.

Mr. **Anderson**. And he said because of his schedule he had first had an opportunity to review the *Romano* file over the preceding weekend. Am I correct about that, sir?

Mr. **Deichert**. I don't remember that aspect of it. I would have to re-read that part.

Mr. **Anderson**. In any event, for whatever reason, Judge Hastings chose to credit Mr. Sonnett's explanation as to why he needed additional time, didn't he?

Mr. **Deichert**. He ruled in his favor, yes.

Mr. **Anderson**. And at that time, were you aware of Neal Sonnett's reputation as a criminal defense lawyer?

Mr. **Deichert**. I knew Mr. Sonnett had a reputation as being a prominent member of the bar.

Mr. **Anderson**. And you had known he had done—perhaps not as long as you—but a considerable period of service in the United States Attorney's Office as a prosecutor?

Mr. **Deichert**. I had heard that he had done some time in the U.S. Attorney's Office.

Mr. **Anderson**. Were you aware that he had risen to become Chief of the Criminal Division in the United States Attorney in the Southern District of Florida?

Mr. **Deichert**. I don't know if I was ever told that.

Mr. **Anderson**. But, you were aware that he was a prominent member of the Criminal Defense Bar at that time?

Mr. **Deichert**. Oh, yes.

Mr. **Anderson**. And the Southern District of Florida was his home court, wasn't it?

Mr. **Deichert**. Yes, I think he may have had a national practice, but his office is based in Miami.

Mr. **Anderson**. So, when he appeared before Judge Hastings and represented that he had not had time to review it, and in reviewing it, he thought there were additional issues that ought to be briefed, Judge Hastings accepted that, didn't he?

Mr. **Deichert**. He ruled in his favor.

Mr. **Anderson**. Yes. And the case was next set for sentencing on July 8, wasn't it?

Mr. **Deichert**. I don't know if we discussed a specific date in the course of this because Mr. Sonnett had some travel planned. I had military service planned. I think it was left to the parties to try to fix on a specific date and get back to the judge on it.

Mr. **Anderson**. And a day was settled upon, you got back to the judge, and on June 1, he issued an order setting the sentencing for July 8, 1981, didn't he?

Mr. **Deichert**. I don't recall if there were other interim notices with an earlier date or not, sir.

Mr. **Anderson**. Could I ask that the witness be permitted to examine House Exhibit Number 2?

Mr. **Deichert**. Is that the docket?

Mr. **Anderson**. That's the docket, sir.

The **Chairman**. Do you have that exhibit?

Mr. **Deichert**. Yes, sir, I do.

Yes, that's the next docket entry concerning scheduling of argument and sentencing.

Mr. **Anderson**. And when you appeared on July 8, Judge Hastings did, in fact, impose sentence upon the Romanos, did he not?

Mr. **Deichert**. Yes.

Mr. **Anderson**. And those were the only two dates upon which you appeared for the sentencing of the Romanos in that case, is it not? Were they not?

Mr. **Deichert**. The 11th of May and the 8th of July?

Mr. **Anderson**. Yes.

Mr. **Deichert**. Yes.

Mr. **Anderson**. And there were no *sua sponte* continuances in the *Romano* case, were there?

Mr. **Deichert**. Not that I'm aware of.

Mr. **Anderson**. Not that I am, either.

Mr. Deichert, Mr. Sonnett filed a timely motion to reconsider Judge Hastings' forfeiture order on June 5, 1981, didn't he, sir?

Mr. **Deichert**. Yes.

Mr. **Anderson**. And the Court of Appeals issued its opinion in *Martino* on June 19, didn't it?

Mr. **Deichert**. Yes, that's correct.

Mr. ANDERSON. And you filed your brief in opposition, or your brief was filed in the court on June 29, 1986, wasn't it?

The CHAIRMAN. Counsel, what date did you specify there?

Mr. ANDERSON. June 29.

The CHAIRMAN. Of which year?

Mr. ANDERSON. 1981.

The CHAIRMAN. Thank you.

Mr. DEICHERT. I'm looking for the date. There is no entry that the Government filed anything on the 29th.

Mr. ANDERSON. It was just mis-typed.

Mr. DEICHERT. It was some point in time in the end of June. I recall that—1981. I see an entry here, a letter from me to the judge enclosing a law review article, and I'm looking now for when I sent my memo down.

Mr. ANDERSON. If you would look down, it was listed as item Number 117, I believe, although it's credited both defendants.

Mr. DEICHERT. Yes, I see it now. I was looking at the lead in the caption which said "Defendants," so I didn't read over.

Mr. ANDERSON. So——

Mr. DEICHERT. So, the Government did file. It was docketed on the 29th of June.

Mr. ANDERSON. And Mr. Sonnett filed his supplemental memorandum on July 6, didn't he?

Mr. DEICHERT. Yes.

Mr. ANDERSON. And that would have been the first memorandum in which Mr. Sonnett could have discussed *Martino* and its application. Is that correct, sir?

Mr. DEICHERT. *Martino*, specifically, yes.

Mr. ANDERSON. Now, you had become familiar with Jeffrey Miller, hadn't you, by this time?

Mr. DEICHERT. Yes, I knew he was Judge Hastings' law clerk.

Mr. ANDERSON. And you knew he was a law clerk who was handling the—assisting the judge on the *Martino* case?

Mr. DEICHERT. On the *Romano* case.

Mr. ANDERSON. On the *Romano* case, yes.

Mr. DEICHERT. Yes, I knew that.

Mr. ANDERSON. And you are aware that it is customary that briefs and motions are routed to the law clerk who is aiding the judge in the first instance, aren't you?

Mr. DEICHERT. Of course.

Mr. ANDERSON. So the last of the briefs on the *Martino* decision were received on Monday, July 6, were they not?

Mr. DEICHERT. Well, that's when it is docketed. It could have been received earlier in chambers.

Mr. ANDERSON. Customarily, the clerk dockets it on the date when the stamp is on this file, does it not?

Mr. DEICHERT. It can be, yes, and ordinarily it is. I don't remember if Mr. Sonnett sent courtesy copies to the judge. For example, that was my habit. I would send a courtesy copy to the court, and they would get theirs direct mail. For example, if it was a Monday—they received it on a Monday—the clerk might not docket it to the following day, so he could get it contemporaneous with a clerk or he could get it a day before.

Mr. **Anderson**. Well, on this one, it was received on a Monday unless Mr. Miller was in on a Sunday, and the Postal Service was doing something extraordinary. This one was probably received on that Monday, was it not, sir?

Mr. **Deichert**. I don't know. I would have to take a look at it. If you said he mailed it on Thursday or Friday——

Mr. **Anderson**. Insofar as you can tell, Mr. Sonnett's brief was docketed on Monday, July 6.

Mr. **Deichert**. Yeah, but you are asking me a question as to when he received it. I can't speculate on that.

Mr. **Anderson**. Now, the hearing in this case was scheduled for July 8, Wednesday morning, was it not?

Mr. **Deichert**. Scheduled for the 8th of July. I don't recall a date.

Mr. **Anderson**. There were several complex motions to be argued at that time, were there not?

Mr. **Deichert**. There were several motions to be argued.

Mr. **Anderson**. Well, point in fact, Mr. Sonnett had filed the supplemental briefs raising issues as he had requested at the May 11 hearing, hadn't he?

Mr. **Deichert**. Yes.

Mr. **Anderson**. And some of those issues were matters of some complexity, weren't they?

Mr. **Deichert**. If you want my opinion, I would say other than the forfeiture, no.

Mr. **Anderson**. Well, let me then take your opinion. You opposed all of Mr. Sonnett's motions, didn't you, at that hearing?

Mr. **Deichert**. Yes.

Mr. **Anderson**. Mr. Deichert, what happened in the *Romano* case?

Mr. **Deichert**. What happened in the *Romano* case?

Mr. **Anderson**. Ultimately, yes.

Mr. **Deichert**. Ultimately, the case was reversed on a trial error that the judge made in which he allowed—he forbade one defendant from speaking to his attorney during a recess—it was called the *United States* v. *Geders*—over my objection, and the case was reversed. Before the case—he came back down to the trial court—both defendants died.

Mr. **Anderson**. And when was that case reversed? Do you recall?

Mr. **Deichert**. Specifically, no. I would think it would be 1982, 1983—somewhere in that time frame.

Mr. **Anderson**. Now, one of the issues that Mr. Sonnett submitted a supplemental briefing on was the *Geders* issue, wasn't it?

Mr. **Deichert**. At this point in time?

Mr. **Anderson**. Yes, sir.

Mr. **Deichert**. I don't believe so. If it was, I would need to take a look at his brief.

Mr. **Anderson**. Well, wouldn't he have had to argue that motion if he intended to preserve it for appeal?

Mr. **Deichert**. If they had made an objection at trial. I'm not that versed in appellate practice that he needed to raise it in a motion for new trial as well, or if his appeal at the trial level is sufficient.

Mr. ANDERSON. In any event, those motions were there, and we will hear from Mr. Sonnett, but the argument itself spanned 107 pages of transcript, did it not?

Mr. DEICHERT. On the entire——

Mr. ANDERSON. July 8, on everything.

Mr. DEICHERT. Everything—sentencing and arguments took a substantial number of pages. I don't know what the exact count was.

Mr. ANDERSON. Well, that would be shown by House Exhibit 6, would it not?

Mr. DEICHERT. Whatever the exhibit is, yes, sir.

Mr. ANDERSON. Now, if I understood you before, you had said that had Judge Hastings accepted *Martino* as controlling law on July 8, he would have vacated the forfeiture in return, $846,000 to the Romano brothers. Did I understand you on that, sir?

Mr. DEICHERT. Right, he would have reversed the money judgment, right.

Mr. ANDERSON. But, in your supplemental memorandum, you found a distinction, or claimed that there was a distinction between *Martino* and *Romano*, did you not?

Mr. DEICHERT. Yes, sir.

Mr. ANDERSON. And you vigorously urged Judge Hastings to once again rely upon you and take this distinction, and not follow what you today say is the controlling law of the circuit and vacate his forfeitures. Is that correct, sir?

Mr. DEICHERT. I argued that the controlling law in *Martino* was distinguishable and asked him not to follow it.

Mr. ANDERSON. But you testified this morning that in point of fact the controlling law was—did require that vacation, did you not?

Mr. DEICHERT. Testified that's what the Fifth Circuit held was controlling, and I testified that the Government found that it was distinguishable. There's a difference.

Mr. ANDERSON. I thought—and let us be careful because these good people will get it—I thought this morning, under Mr. Conyers' questioning, you said that if Judge Hastings had followed *Martino* on July 8, that he would have had to vacate that forfeiture.

Mr. DEICHERT. That's what I said, yes, if he had followed *Martino* on that issue.

Mr. ANDERSON. But you argued to him on July 8 and in your papers that *Martino* could be distinguished so that he didn't have to follow it.

Mr. DEICHERT. That's correct.

Mr. ANDERSON. Mr. Deichert, at the July 8 hearing, Judge Hastings did announce that he would issue a brief order confirming his view on the forfeiture issue, did he not?

Mr. DEICHERT. He said he would issue an order explaining his reasons.

Mr. ANDERSON. And no order had been issued by August 27, had it?

Mr. DEICHERT. No, not concerning the RICO.

Mr. ANDERSON. And August 27 was the day in which the Court of Appeals issued an opinion in a case called *United States* v. *Peacock*, isn't it?

Mr. Deichert. I'm not sure of the date, but I recall it was late in August.

Mr. Anderson. And in *United States* v. *Peacock*, do you also recall that the Court of Appeals, a panel, summarily reversed a district judge who had the chutzpah not to give controlling effect to *United States* v. *Martino* in a forfeiture case? Chutzpah is my characterization. I withdraw that. They summarily reversed a district judge who declined to follow *Martino* and give it controlling effect.

Mr. Deichert. I know they reversed—I'm not sure—I haven't looked at that opinion for some period of time, so I know they reversed.

Mr. Anderson. You know they reversed. And the district judge they reversed had found a distinction and failed to give controlling effect to *Martino*, hadn't he?

Mr. Deichert. Right.

Mr. Anderson. And they reversed him.

Mr. Deichert. Correct.

Mr. Anderson. In point-of fact, slip opinions are ordinarily sent to judges within the Circuit, and to prosecutors almost immediately, aren't they?

Mr. Deichert. If they're subscribers, yes.

Mr. Anderson. And ordinarily they are received within a couple of days?

Mr. Deichert. Sometimes the case is spanned from—they come out in batches, so if one is issued on a Monday, one is issued on a Thursday, they don't mail it until Thursday, there may be a week or ten days, otherwise it may be a shorter period of time.

Mr. Anderson. Do you recall testifying at the trial in the *United States* v. *Borders*?

Mr. Deichert. I remember appearing as a witness, yes.

Mr. Anderson. And do you recall testifying there that in your experience slip opinions are received by Federal judges and U.S. Attorneys within a couple of days of their issuance?

Mr. Deichert. Right.

Mr. Anderson. Have they changed the practice in this mailing them in packets where it could take 8–10 days?

Mr. Deichert. You asked me a different question. You asked me—as I understood you, perhaps, I misheard your question.

Mr. Anderson. It's been going on for years, thank you.

Mr. Deichert. I beg your pardon?

Mr. Anderson. People do seem to have problems understanding me.

Do judges get—chambers get slip opinions within a couple of days after they're issued?

Mr. Deichert. A couple of days after they're mailed, they receive it, yes.

Mr. Anderson. Now, you called Mr. Miller from time to time to enquire about the status of the forfeiture order, didn't you?

Mr. Deichert. I phoned him several times, right.

Mr. Anderson. And he told you that there was an order in preparation, and it would be issued, didn't he?

Mr. Deichert. In essence, yes.

Mr. Anderson. And you knew that was going on?

Mr. DEICHERT. In the end of August, I guess, or September, I did, yes.

Mr. ANDERSON. Now, Mr. Deichert, at some point, someone from the FBI expressed interest in the status of the forfeiture order on *Romano*, didn't they?

Mr. DEICHERT. Yes, that's true.

Mr. ANDERSON. Do you recall who that was?

Mr. DEICHERT. From the FBI, it would be Special Agent William Murphy.

Mr. ANDERSON. And he asked you to keep him apprised if you happened to call Mr. Miller to find out about that order, didn't he?

Mr. DEICHERT. Yes, he asked me to keep him apprised of the status of the case.

Mr. ANDERSON. And you in fact did call Mr. Miller on September 22 to ask him about the status of the order, didn't you?

Mr. DEICHERT. Yes, I believe so.

Mr. ANDERSON. And you called Mr. Miller two or three more times between September 22 and October 26 to enquire about the status of the order, didn't you?

Mr. DEICHERT. I don't think it was that many times, no. I remember talking to him a total of about three or four times. I called him once in August to ask him if the order had been released. He said "no." I asked him when it was released if he would publish it. When I told him my boss that, he said, "You don't have any business advising a district judge whether he should or he shouldn't publish. Call him back, and tell him withdraw it." So, I did.

Then he was called sometime in September, and I think I spoke to Mr. Miller sometime in early October. I remember those four instances.

Mr. ANDERSON. So your present recollection is you spoke to him on September 22 and at least one time in early October enquiring about the status of the *Romano* order.

Mr. DEICHERT. In October, I think he told me the order of an issue, and I don't remember if I called him or he called me.

Mr. ANDERSON. In October, do you recall what date that was?

Mr. DEICHERT. I think it was the 7th.

Mr. ANDERSON. Well, between September 22nd and October 6th, did you call Mr. Miller again to enquire about the order?

Mr. DEICHERT. I don't have a present recollection that I could be able to say one way or the other.

Mr. ANDERSON. Now, you were away from your office on October 7th when it was received, weren't you?

Mr. DEICHERT. Yes, I believe so.

Mr. ANDERSON. But, you learned the order had been issued on October 6th, didn't you?

Mr. DEICHERT. I learned the order had been issued on October 6th—I think on October 7th.

Mr. ANDERSON. Didn't Government agents call you on October 6th to tell you that an order had been issued, that the forfeiture order had been issued?

Mr. DEICHERT. I don't remember if it was the 6th or it was the 7th after I spoke to Mr. Miller.

Mr. ANDERSON. Can I take just a moment?

[Pause.]

Mr. **Anderson**. Now, Mr. Deichert, to the best you can recall, almost eight years after the fact, when were you first contacted by Agent Murphy and told that they had some interest in the status of the *Romano* order?

Mr. **Deichert**. I think it was sometime in September of 1981. I don't know if I could place an exact date on it.

Mr. **Anderson**. And was it Agent Murphy who made that first contact?

Mr. **Deichert**. I don't remember if it was Agent Murphy or if I was contacted by someone in the Public Integrity Section of prosecutor.

Mr. **Anderson**. Well, did you ever have occasion to speak to Reid Weingarten——

Mr. **Deichert**. Oh, yes.

Mr. **Anderson** [continuing]. About the case?

Mr. **Deichert**. Yes, sir.

Mr. **Anderson**. And would that have been prior to October 6?

Mr. **Deichert**. Yes.

Mr. **Anderson**. And you had occasion to speak to Agent Murphy prior to October 6?

Mr. **Deichert**. Yes.

Mr. **Anderson**. Now at anytime in those early conversations, did they ever ask you whether Judge Hastings had granted a *sua sponte* continuance in the *Romano* case?

Mr. **Deichert**. I can't recall.

Mr. **Anderson**. Would you search your recollection on that one? What do you recall them telling you when they first approached you?

Mr. **Deichert**. He first asked me for some background about *Romano*. I had been told by my superior in Miami that there was a sensitive matter going on that I should cooperate and provide whatever information was requested. I did. They asked me about the case. They asked me questions about the status of the forfeiture. They asked me questions, for example, about the defendants personally—things along those lines—just matters about the case, in general. Whatever they asked me, I responded or gave them information.

I think in one or two instances, I had to refer them to an agent down in south Florida, or else I told them I would have to get information and call them back.

Mr. **Anderson**. Well who would be your agent in south Florida?

Mr. **Deichert**. Special Agent James White, who was an IRS agent.

Mr. **Anderson**. And you do not recall whether they asked you whether there had been a *sua sponte* continuance?

Mr. **Deichert**. I have no recollection, no.

Mr. **Anderson**. But if they had asked you that, you would have told them there had not been, would you not?

Mr. **Deichert**. I don't recall. I guess I would have. I don't recall any *sua sponte* at the present time, to my knowledge.

Mr. **Anderson**. Well I thought we had gone through that it came up for sentencing on May 11, and it came up for sentencing on July 8. Those were the only two times it came up for sentencing based upon the docket and your recollection, isn't that correct, sir?

Mr. **Deichert**. I indicated that I thought there was another sentencing notice in the docket.

Mr. **Anderson**. But it never came on for sentencing, did it?

Mr. **Deichert**. No.

Mr. **Anderson**. And the May 11th was continued at the urging of Mr. Sonnett over your vigorous opposition.

Mr. **Deichert**. That's correct.

Mr. **Anderson**. And on July 8th, Judge Hastings imposed sentence.

Mr. **Deichert**. Correct.

Mr. **Anderson**. Now you do recall testifying at Mr. Borders' criminal trial, don't you?

Mr. **Deichert**. The appearance, yes.

Mr. **Anderson**. Do you recall being asked by Mr. Shorter "did you know on October 6, 1981, that Judge Hastings had entered an order addressed to the forfeiture issue in the *Romano* case?" You responded with an enquiry directly. He responded, well, indirectly, whichever way you might have gotten the information.

"Do you recall responding indirectly" "I believe I did, yes, sir." And the question was then asked, "Did you learn that through conversations with other Government agents, officials, or officials' attorneys?" To which you responded "Yes, Government agents or attorneys."

Do you recall that, sir?

Mr. **Deichert**. Now that you have read it to me, I recall that.

Mr. **Anderson**. And that was back in 1982, wasn't it?

Mr. **Deichert**. I think it was 1982.

Mr. **Anderson**. And even though you have lived with the case, your recollection back in 1982 might have been fresher than it is today?

Mr. **Deichert**. As to that, apparently it was, yes.

Mr. **Anderson**. Did you testify before the grand jury in this matter, Mr. Deichert?

Mr. **Deichert**. No.

Mr. **Anderson**. But you did testify at Judge Hasthngs' trial.

Mr. **Deichert**. Correct.

Mr. **Anderson**. And Mr. Borders' trial.

Mr. **Deichert**. Correct.

Mr. **Anderson**. And you were called twice before the investigating committee, weren't you, sir?

Mr. **Deichert**. Yes, correct.

Mr. **Anderson**. On each occasion you have tried to tell the truth, haven't you?

Mr. **Deichert**. The best to my recollection, I have.

Mr. **Anderson**. Now one final line, Mr. Deichert. The delay between the conviction on December 20, 1980, and the imposition of sentence July 8, 1981 was seven months, almost seven months. Is that correct, sir?

Mr. **Deichert**. It's approximately that length of time.

Mr. **Anderson**. And do you recall when the appeal was argued in the Court of Appeals from that decision?

Mr. **Deichert**. From which?

Mr. **Anderson**. From the *Romano* decision.

Mr. **Deichert**. No, I don't.

Mr. ANDERSON. Would it surprise you if oral argument took place, if you learned that the oral argument had taken place in 1983?

Mr. DEICHERT. I'd have no way of basing that unless I looked at the opinion or the docket in the Eleventh Circuit.

Mr. ANDERSON. Well we've had some testimony about things that surprised you, so I'm asking now would it surprise you if you learned if it was two years, more than a year later, that the oral argument took place?

Mr. DEICHERT. No.

Mr. ANDERSON. And would it surprise you if learned it was almost two years before the decision came down reversing on what you thought was a very simple *Geders* issue? Would that surprise you?

Mr. DEICHERT. It doesn't surprise me because I recall that.

Mr. ANDERSON. Pardon?

Mr. DEICHERT. It does not surprise me because I recall that there was a span of time between the argument and the decision.

Mr. ANDERSON. And did you consider that delay of some two years inordinate?

Mr. DEICHERT. Yes.

Mr. ANDERSON. And did it cause you to suspect what the judges were up to?

Mr. BARON. Objection.

Mr. ANDERSON. Oh, we have had a lot of testimony about suspicion here, today.

The CHAIRMAN. Is there an objection?

Mr. BARON. There is an objection, Your Honor—Senator, I think that question is out of line and inappropriate.

The CHAIRMAN. The objection will be overruled. You can respond if you have an opinion on that.

Mr. ANDERSON. I will withdraw the question.

[Pause.]

Mr. ANDERSON. We have no further questions, Mr. Chairman.

The CHAIRMAN. Representative Conyers, did you have redirect examination?

Mr. CONYERS. Mr. Chairman, we don't have any further questions.

The CHAIRMAN. Then if there are no further questions by either the House managers or the respondent's attorneys, let me see if any member of the committee has a question they would like to ask of this witness before the witness is dismissed.

Senator Specter, did you have any questions?

EXAMINATION BY THE COMMITTEE

The VICE CHAIRMAN. Thank you, Mr. Chairman, very briefly.

Mr. Deichert, do you know whether Mr. Sonnett advised Judge Hastings about his intention to ask for a continuance in advance of the time that the two of you appeared in court at the May 11th sentencing hearing?

Mr. DEICHERT. He said nothing to me about it in the hallway conversation I had with him immediately before the proceeding. That was the only time I discussed it with him.

The VICE CHAIRMAN. So you had no knowledge of any communication by Mr. Sonnett to Judge Hastings about his intention to ask for a continuance?

Mr. DEICHERT. Not until I appeared in the hall, and he said nothing that he had contacted the judge's chamber.

The VICE CHAIRMAN. Did you have any other basis or any inkling that Judge Hastings might have been advised of Mr. Sonnett's intention to ask for a continuance, from any source?

Mr. DEICHERT. No. The judge did not say from the bench that he had been made aware of it, and Mr. Sonnet did not. I did not speak to anyone else about it.

The VICE CHAIRMAN. Mr. Deichert, did you object to the order of forfeiture remittance on the ground that the trial court had lost jurisdiction after the appeal?

Mr. DEICHERT. I did not, but the persons in the appellate section did. Yes.

The VICE CHAIRMAN. And what was the outcome of that?

Mr. DEICHERT. The Government lost. The Fifth Circuit ruled that the notice of appeal did not divest the district court of jurisdiction to act on that case.

The VICE CHAIRMAN. When you called about an interest in having Judge Hastings publish his opinion, at that time did you think that it would distinguish *Martino* and therefore be a favorable written ruling for the Government on forfeiture issues?

Mr. DEICHERT. Definitely.

The VICE CHAIRMAN. Thank you very much. Senator Leahy.

Senator LEAHY. Thank you, Mr. Chairman. Just very briefly. I just want to make sure I understand some of these steps on the sentences imposed on Thomas and Frank Romano.

Now as I understand it, you made a recommendation to the court on sentencing, is that correct?

Mr. DEICHERT. I made a general recommendation for incarceration.

Senator LEAHY. Well, let me be more specific. Do you just say, "Your Honor, these defendants ought to go to jail" or do you say that the law allows "x" number of years, and they ought to get the maximum, half of it, or, what do you mean by "general recommendation"?

Mr. DEICHERT. I argued all the facts, and then, at the end, said, judge, we recommend incarceration and leave it to the court's exclusive prerogative or discretion as to what that should be. I think that is pretty close to what I would have said.

Senator LEAHY. I understand. I spent a number of years as a prosecutor, and I recall with different judges you do it different ways. So you would not have recommended "x" number of years as you recall?

Mr. DEICHERT. In this case I did not. In some cases I do. In this case I did not.

Senator LEAHY. And this was not a case where there was a plea bargain or something like that, where the Government would have agreed to recommend a specific number of years?

Mr. DEICHERT. No. It was not a pleas bargain. It was a full trial and we would have been free to recommend up to the maximum, but the thing that you take into account is if you ask for an inordinate amount of time or an inordinate sentence, you lose credibility as an advocate.

Senator **Leahy**. And the last part of my question concerns the recommendations of the probation office. I was not quite sure I understood the testimony here. Do you get to read the probation report?

Mr. **Deichert**. The probation report goes through a number of things, and at the end of it there is a recommendation.

On the version that counsel sees, that recommendation is not included. That is between the probation officer and the judge alone, and that is information that we are not privy to.

Senator **Leahy**. So you see everything, like in the background, the person's past record, expressions of remorse, something like that? You see all that?

Mr. **Deichert**. See, everything—in this, for example, document. It is 18 pages we see, or 19-21 pages. We saw everything except the last three or four paragraphs, which read "Recommendation". Everything else I recall seeing.

Senator **Leahy**. And on those last ones that you now have before you, what does it recommend for a sentence?

Mr. **Deichert**. Three years. "It's respectfully recommended that the defendant be committed to the custody of the Attorney General or his authorized representative for a period of three years." Then it goes on to indicate concurrent sentences on the balance.

Senator **Leahy**. And that is what they were given?

Mr. **Deichert**. Yes, sir.

Senator **Leahy**. And was it your experience that the probation report—I realize you do not see them—but did you have an impression that the courts normally followed what the probation office suggested on sentences?

Mr. **Deichert**. I do not see them so I could not make that, but Federal judges do whatever their heart directs them to do.

Senator **Leahy**. I have practiced before a few myself. I know. But are you surprised? Is there anything, now, that surprises you, that the judge followed exactly what the probation office said?

Mr. **Deichert**. I still am because of the amount of time that they would have had to have served. The recommendation indicated that they would have to serve probably the full three years. For a 65-year-old man, or however old he was—I would have to go back and look, I do not remember exactly—well, they were in their sixties, and for a man with three heart attacks, to serve three years in jail is probably a life sentence.

Senator **Leahy**. But that is a part of your testimony, earlier, that I still do not understand. The three-year penalty. You think it was extremely long because of the physical condition of the defendant. Do you think the three years was long for the crime committed?

Mr. **Deichert**. I think you would have to take all the factors into play. I do not know if you could isolate just one. If the person had "x" number of convictions, that has a factor. These people had no convictions.

Senator **Leahy**. Let me ask, again, in your experience, and as an experienced prosecutor: Based on what is in that probation, parole report which you have read, do you find the three years out of the ordinary, and the recommendation of three years out of the ordinary?

Mr. DEICHERT. I think it is high. Yes.

Senator LEAHY. But that is what the court followed. Let me make sure I fully understand it. You just made a recommendation that there should be imprisonment, period?

Mr. DEICHERT. Yes, sir.

Senator LEAHY. The probation office recommended there be three years imprisonment, is that correct?

Mr. DEICHERT. That is what I have subsequently learned.

Senator LEAHY. Yes. And then the judge gave three years?

Mr. DEICHERT. Correct.

Senator LEAHY. So in effect he followed both your recommendation and the probation office. I mean, if he followed your recommendation there would be a jail sentence, and he followed the probation office as to the amount of time?

Mr. DEICHERT. Yes.

Senator LEAHY. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Are there other questions from committee members?

Senator PRYOR. Mr. Chairman.

The CHAIRMAN. Yes. Senator Pryor.

Senator PRYOR. Mr. Chairman, this will be very short, and I just want to clarify one point. In the October 6th, basically reversal of his earlier findings relative to the forfeiture issue, and Judge Hastings I assume reversed himself basically in the forfeiture issue. In the sentencing of the three years for the Romano brothers, Judge Hastings left that part of the sentence intact, is that correct?

Mr. DEICHERT. The sentence was left intact. There was no motion before him to do anything about the sentence at that time. The only thing open was the forfeiture.

The matter of sentencing, once the notice of appeal from the jail term came down, he would be without jurisdiction to do anything on that unless they dismissed that notice.

There are two notices of appeal filed, one from the property forfeited, the other from the judgment and conviction, and they can take different paths up to the Court of Appeals.

Senator PRYOR. But at that point, did Judge Hastings lose the jurisdiction of the issue of the incarceration of three years?

Mr. DEICHERT. While the matter was pending before the Court of Appeals, yes, he did. Did I confuse you?

Senator PRYOR. No, sir. I think I am following.

Mr. DEICHERT. In the ordinary course—for example, in a case like this—the case would have gone up on appeal after the Appellate Court ruled on whether to validate or invalidate the conviction. It would make a determination it could go on, then, for example, to the U.S. Supreme Court.

When that got all done, then they would begin, at that point in time, a period of—under the law then, it was 120 days to overrule.

Senator PRYOR. Mr. Chairman, I know it is late, and this is irrelevant. Does *Martino* and *Peacock* the gas law there, is that still the law today in the Fifth Circuit, or is that the law in this country, or——

Mr. DEICHERT. No. That was reversed. The Peacock panel had no alternative but to follow *Martino*. Later, a panel of three judges ruled on each of those cases. It would be then up to the entire Fifth Circuit sitting as a body, *en banc*—I do not know if there were 11 or 15 judges—for them, then, to overrule, which they did.

Senator PRYOR. I see. Thank you very much, sir.

The CHAIRMAN. Are there other questions by any committee member? Senator Bryan.

Senator BRYAN. Mr. Chairman, just one. Were you familiar with the *Peacock* ruling when it came down in August of 1981? Had you followed that case at all, Mr. Deichert?

Mr. DEICHERT. Yes.

Senator BRYAN. So whenever you received the information, whether it was the 6th of October or the 7th of October, that Judge Hastings had modified his prior July 8 sentencing order with respect to the forfeiture, you were aware of both *Martino* and *Peacock*?

Mr. DEICHERT. Yes. I was aware of it. *Peacock* had no additional precedential value. Once one panel rules, there could be a 100 panels following that same thing. Until the entire Fifth Circuit, as a body, ruled to overrule it, one panel had to follow another. So *Peacock* was of no consequence, legally.

Senator BRYAN. So you did not give any additional significance to the *Peacock* decision, then?

Mr. DEICHERT. No. There was none.

Senator BRYAN. And let me be clear on this, and this is my question, Mr. Chairman. So when you received word of the modification of the forfeiture order, were you surprised, or did you just think that perhaps the judge had followed the Peacock decision and had reconsidered his previous position, which you had persuaded him to adopt, that is, to make a distinction in the *Martino* case? Or were you surprised? Give me your reaction. I am not sure that I understood that, completely.

Mr. DEICHERT. After the agents and the Public Integrity attorney had contacted me, and advised me that there was a public corruption case going on, my reaction was that he was corrupt.

Senator BRYAN. So prior to the 6th or the 7th of October 1981, you were aware that there was something that may be awry in this particular judge, in his particular case?

Mr. DEICHERT. Shortly before that, when they told me there was an investigation, I became aware of that.

Senator BRYAN. I see. Thank you, Mr. Chairman.

The CHAIRMAN. Are there any other questions by any committee member?

[No response.]

The CHAIRMAN. Does either the House managers or counsel for the respondent have a reason why this witness should not be excused?

Mr. BRYANT. We have no reason.

Mr. ANDERSON. He may be excused.

The CHAIRMAN. This witness is excused.

[Witness excused.]

The CHAIRMAN. At this point it is the intention of the committee to recess and very quickly go into a closed session at which we will consider some of the procedural questions about the upcoming witnesses, and if counsel for both sides will remain present, we will call you in just a few minutes and ask you to give us your point of view on the procedural issues that we need to decide before we adjourn.

It is my understanding that the House managers do not have another witness available now to call. Is that correct?

Mr. **Bryant**. Mr. Chairman, we have the witness available. What we have asked to be allowed to do is to stick with our arranged order of presentation of the witnesses. The witness who is present is Martha Rogers who is to come after the testimony by William Dredge.

She is present, but we have asked to not be required to put her on out of order, inasmuch as to do so would not really save any time. She is a very brief witness.

The **Chairman**. All right. Well, let the committee—yes, Mr. Anderson? Did you have a comment?

Mr. **Anderson**. I had not planned on doing so, but I think, now, that there have been questions focused on it. It might be useful if I could offer the probation report that has been identified by Mr. Deichert as Respondent's Exhibit Number 1, just so it is in the record.

Senator Leahy had asked questions about it that go beyond refreshing recollection, so——

The **Chairman**. Do the House managers object to the introduction of that exhibit?

Mr. **Bryant**. We have no objection.

The **Chairman**. It will be admitted.

[The document referred to was marked Respondent's Exhibit No. 1 and was received in evidence.]

Mr. **Anderson**. And could I ask the Clerk, since I only brought one copy with me, if we could get copies for the managers, who I think have them, and for myself, so it is a marked copy.

The **Chairman**. We will see to it that the House managers get a copy and that there are copies for counsel.

The committee will stand in recess, and if counsel will remain so that we can call upon them in a few minutes, we would appreciate it.

We will reconvene in open session at 9:00 o'clock tomorrow morning, rather than 9:30.

[Whereupon, at 2:51 p.m., the committee recessed, to reconvene on Tuesday, July 11, 1989 at 9:00 a.m.]

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IMPEACHMENT TRIAL COMMITTEE
(ON THE ARTICLES AGAINST JUDGE ALCEE L. HASTINGS)
HART SENATE OFFICE BUILDING, ROOM SH-902D
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IMPEACHMENT TRIAL COMMITTEE
EIGHTH ORDER

A. Prior Testimony

In its Fourth Order, dated May 24, 1989, the Committee noted the desirability, in circumstances consonant with fairness to the parties, of permitting the prior recorded testimony of some witnesses to be introduced into the record in place of live examinations. It is the Committee's belief that the use of this procedure, especially where the testimony related to facts not in substantial dispute or came from witnesses whose credibility is not questioned, will further the creation of a coherent record for use by the Senate.

The parties were directed to, and did, identify for the Committee the prior testimony they desired to offer into evidence. The Committee has reviewed all written submissions of the parties on this topic, and has considered their oral arguments as well. The Committee recognizes the general objection on the grounds of hearsay made by Judge Hastings to the receipt of any prior testimony as substantive evidence (somewhat modified in his most recent submission), but as noted in the Committee's disposition of pretrial issues on April 14, 1989, neither it nor the Senate is bound in these proceedings to strict judicial rules of evidence. (The

Committee notes that even under the Federal Rules of Evidence, hearsay may be received if the court is satisfied that the interests of justice are served by its admission.)[1] On the other hand, the Committee does not believe it appropriate to admit prior testimony into evidence on key points where credibility, context or interpretation are in dispute -- particularly where the opposing party has not had an opportunity for cross-examination.

The Committee also does not believe it appropriate to address at this time objections, such as relevance, competence, prejudice, privilege or hearsay, to the content of any proffered prior testimony, and expressly reserves all such decisions until the commencement of the evidentiary proceedings on July 10.

Subject to the foregoing, the Committee has decided that it will receive certain prior testimony as substantive evidence, but will do so only where the prior testimony is offered in place of -- and not in addition to -- a party's calling that witness in its own case. The Committee's decision to receive prior testimony from certain witnesses does not preclude those witnesses being called by the opposing party, with appropriate opportunity then for cross-examination. Accordingly, the Committee rules that:

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[1] Rule 803(24), F.R.Ev.; see also, Rule 804(b)(5), F.R.Ev.

1. The entire testimony of Richard Lowe, Willie James Washington, and Laverne Boone before the Investigating Committee of the Eleventh Circuit ("IC") will be received into evidence. Judge Hastings has waived any specific objection to the testimony of these airline employee witnesses, whose testimony is limited solely to the meaning of certain airline records. The Committee believes that their testimony is not subject to substantial dispute, and notes that if there are further matters that Judge Hastings wishes to elicit from these witnesses, the Senate will at his request issue subpoenas so that he may do so in the presentation of his own evidence.

2. Neither the prior grand jury nor the IC testimony of Daniel Simons will be received into evidence. Judge Hastings has never cross-examined Mr. Simons,2/ and Simons' testimony, which directly describes Judge Hastings' actions in issuing a forfeiture order that the House alleges was central to the bribery scheme, is more than peripheral. The

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2/ The Committee notes the House's position that Judge Hastings had, but declined, the opportunity to cross-examine Mr. Simons before the IC, but is more guided by its reluctance to have the record here contain significant substantive evidence against Judge Hastings from this witness who was not subject to cross-examination on behalf of Judge Hastings. Notwithstanding this ruling, however, the Committee remains of a general view that a party's failure to exercise an opportunity to cross-examine may appropriately be considered a waiver of that opportunity.

House is invited to consider whether other means which would allow Judge Hastings an opportunity of cross-examination, such as a telephonic deposition, might be employed to provide the testimony of Mr. Simons.

3. The complete trial testimony of Madeline Petty in United States v. Hastings and pp. 220, ll. 5-6; 222, ll. 3-7; and 224, ll. 7-11 from her IC testimony will be received into evidence, subject to Judge Hastings' right to call her as his own witness. The Committee is substantially influenced by the facts that Judge Hastings did have an opportunity to cross-examine Ms. Petty at his trial; that the testimony regarding Ms. Petty's travel to Las Vegas with Mr. Borders is not disputed; and that the details in her IC testimony regarding her phone number and non-acquaintance with Dredge are not disputed.

4. The IC testimony of Neal Sonnett and Joel Hirschhorn will not be received into evidence. The Committee has reviewed the proffered testimony with care. In both instances, the Committee feels, the testimony involves matters where the context and interpretation of particular events may be significant, and where the Committee is reluctant to permit its record to be based on *ex parte* examinations. Particularly with respect to Mr. Hirschhorn, the Committee notes the repeated attorney-client privilege

issues which his testimony raised, and feels that in these proceedings it would be better to have such testimony as the House might desire from this witness offered directly by the witness in Judge Hastings' presence.

5. The IC testimony of Carolyn McIver, Andrew Chisolm, and Eleanor Golar-Williams which relates to whether Hemphill Pride could be reached at their telephones will be received into evidence, if these witnesses are not called to testify. The Committee notes that Judge Hastings has, in his Answer to Impeachment Articles X through XIII, admitted the substantial accuracy of this testimony, and sees no reason why these three witnesses should be required to appear as live witnesses on this issue unless Judge Hastings wishes to call them as a part of his case. To the extent that any other issue is sought to be proven from these witnesses, however, the Committee will not receive their IC testimony for that purpose.

6. The IC testimony of Louima Romano will not be received into evidence. Judge Hastings has never cross-examined this witness, and the Committee notes that much of her proffered testimony was vague, and became precise only in response to leading questions.

7. The trial testimony of Paul Rico, Benjamin Daniel Brown, Charles T. Duncan, Mildred Hastings, Shirley Pride,

Simon Stephen Selig III, and Dudley Williams in United States v. Hastings and United States v. Borders will not be received into evidence. These are witnesses whom the opposing party has expressed a desire to examine, and if evidence from them is to be a part of the case here, the opposing party should have an opportunity to cross-examine. To the extent that any of these witnesses are unavailable, the Committee is willing to reconsider its ruling under standards similar to those in Federal Rule of Evidence 804.

8. The entire trial testimony of I.J. Cunningham, Willie E. Gary, Lisa Goldstein, Barbara Katzen, Carolyn Lewis, Alvoyd Merritt, the Honorable James C. Paine, Herman C. Perry, Mildred Pride, Herbert O. Reid, Frank Romano, Shirley Ross, Paul Snead, Ralph Stevenson, Delano Stewart, and Barbara Whiting-Wright in United States v. Hastings and United States v. Borders will be received into evidence. This testimony has been proffered by Judge Hastings, and the House has not objected.

9. Judge Hastings' application to include in the record as substantive evidence the entire trial records of both United States v. Hastings, No. 81-596-CR-ETG (S.D. Fla. 1983) and United States v. Borders, No. 82-75-A (N.D. Ga. 1982) is denied. The Committee sees no reason to further expand the record here with volumes of transcripts and

hundreds of exhibits from two separate proceedings. The Committee has been, and continues to be, willing to accept specific proffered items of testimony and documentary evidence, but believes that acceptance of the full record of two other trials as substantive evidence would be more confusing than informative.

The Committee defers ruling on Judge Hastings' alternative proffer of the entire Hastings trial record not as substantive evidence, but rather to show that the 1981 bribery allegations and the false statement issues arising out of his defense of them were presented fully and fairly to the jury which acquitted him. Judge Hastings argues that this should be a key, if not dispositive, fact in the Senate trial; the House managers assert, to the contrary, that this evidence has no relevance whatever, and Judge Hastings should be convicted or acquitted based solely on the evidence adduced here.

The Committee does not believe it appropriate to decide an important issue of weight and relevancy for the Senate in the context of ruling on whether certain prior testimony may be received as substantive evidence. It may be that Judge Hastings' argument can properly be put to the full Senate for such weight as any Senator chooses to give it. At this time the Committee notes that a decision to include the entire Hastings trial record in its "report of evidence" to the Senate may have the effect of commingling the evidence admissible generally with a very similar body of evidence admitted only for limited purposes. The Committee invites Judge Hastings to make an alternative suggestion of a mechanism for presenting his argument regarding the effect, if any, of his 1983 acquittal to the full Senate -- for example, through creation of a summary of witnesses and exhibits in the 1983 trial for entry into the record here -- without the potential for confusion that may be inherent in duplicating the entire prior trial record.

B. Documents

In its Fifth Order, dated June 8, 1989, the Committee directed the parties to exchange lists and copies of their intended exhibits and, by not later than June 27, 1989, to serve notice of any objection to the opposing party's exhibits on the basis of authenticity, genuineness or status as a business record. The Committee's order provided that, in the absence of a "reasoned and specific objection" from the opposing party, the offering party would not be required to prove authenticity, genuineness or status as a business record for any document so identified.

The House has complied with the Committee's order by providing a list and copies of exhibits in a timely fashion. Judge Hastings has not. Accordingly, the Committee rules that the House shall retain the right to object on any basis to documentary evidence offered by Judge Hastings, including objections based on a position that Judge Hastings' failure to supply his exhibit list in a timely fashion has caused unfair surprise.

Judge Hastings has, however, made specific objections to some of the proffered House exhibits: Nos. 1, 4, 10, 15, 23, 38b, 43b, 44b, 45b, 46b, 47b, 48b, 49b, 50b, 51b, 52b, 53b, 54b, 55b, 56b, 57b, 58b, 59b, 60b, 61b, 62b, 64b, 65b, 66, 67, 120, 123, 124, 128, 129, 139, 141, 145, 147, 175b, 185b, 186b, 187b, 190, 192, 193b, 194b, 201, 202, 203, 206, 207, 208 and 209. Accordingly, all other proffered House exhibits will be received as genuine, authentic, and where appropriate, as regularly recorded business entries.

With regard to Judge Hastings' specific objections to proffered House exhibits, the Committee rules as follows:

Exhibits 1, 15, 66, 67, 120, 123, 124, 128, 129, 139, 141, 145, 147, 192, 201, 202, 203, 206, 207, 208, and 209: Ruling reserved, subject to argument before the Committee.

Exhibits 4, 175b, 190: Exhibits will be accepted as genuine, authentic, and, where appropriate, as regularly recorded business entries.

Exhibits 10, 23: Exhibits accepted if legible.

Exhibits 38b, 43b, 44b, 45b, 46b, 47b, 48b, 49b, 50b, 51b, 52b, 53b, 54b, 55b, 56b, 57b, 58b, 59b, 60b, 61b, 62b, 64b, 65b, 185b, 186b, 187b, 193b, and 194b: Respondent objects to the admission of these transcripts of tape recorded conversations on the grounds that the transcripts are "inaccurate and incomplete" as well as on "other [unspecified] grounds." The Committee recognizes that the tapes themselves are the best evidence of the contents of recorded conversations, but believes that the transcripts tendered by the House are appropriately received as additional evidence.[3] Accordingly, these documents will be received. Leave is hereby given to Judge Hastings to submit any corrections he may wish made to the transcripts tendered by the House, and those corrections will be received as separate Hastings exhibits.

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[3] Although not binding on the Committee or the Senate, this procedure is commonly followed in the courts. *See e.g.*, *Govt. of Virgin Islands v. Martinez*, 847 F.2d 125, 128 (3d Cir. 1988); *United States v. Rengifo*, 789 F.2d 975, 980-83 (1st Cir. 1986), and cases cited therein.

C. Hearing Procedures

In order to provide for orderly proceedings, the parties are requested to alert the Committee to any legal issues or evidentiary matters that they anticipate may require ruling by the Committee and to submit short memoranda in support of their position. The parties should attempt to so advise the Committee at least three days in advance of when the need for a ruling is anticipated.

Judge Hastings is directed promptly to advise the House and the Committee of the order in which he anticipates that his witnesses will be called.

Jeff Bingaman, Chairman

Arlen Specter, Vice Chairman

Dated: July 10, 1989

IMPEACHMENT OF JUDGE ALCEE L. HASTINGS

TUESDAY, JULY 11, 1989

U.S. SENATE,
IMPEACHMENT TRIAL COMMITTEE,
Washington, DC.

The committee met, in closed session, pursuant to notice, at 9:10 a.m., in room SH-216, Hart Senate Office Building, Hon. Jeff Bingaman, chairman of the committee, presiding.

Present: Senators Bingaman, Specter, Leahy, Durenberger, Pryor, Rudman, Bryan, Bond, Kerrey, Gorton, Lieberman, and Burns.

House Managers Present: Representatives Bryant, Conyers, Synar, Fish, and Gekas.

Counsel Present: Terence Anderson, counsel for Judge Hastings; Patricia Graham Williams, counsel for Judge Hastings; Robert S. Katz, counsel for Judge Hastings; Lewis Myers, Jr., counsel for Judge Hastings; Alan I. Baron, special counsel, House Impeachment Committee; Janice E. Cooper, Patricia Wynn, and Lori E. Fields, assistant special counsel, House Impeachment Committee; Michael Davidson, Senate Legal Counsel; Elaine Stone, counsel, Senate Impeachment Trial Committee; Mark Klugheit, counsel, Senate Impeachment Trial Committee; Bruce McBarnett, counsel, Senate Impeachment Trial Committee; and Roger Spaeder, counsel for William Dredge.

Staff Present: Anthony Harvey, Administrator, Senate Impeachment Trial Committee; P. Casey McGannon, staff assistant, Senate Impeachment Trial Committee; and Isabel McVeigh, staff assistant, Senate Impeachment Trial Committee.

The CHAIRMAN. The committee will reconvene. We are now in closed session pursuant to a vote of the committee in response to William Dredge's expression of concern for his personal safety.

The only persons who should be present at this time in the facility are Mr. Dredge—I gather he is not here yet; is that right——

Mr. BARON. That's correct, but he is readily available.

The CHAIRMAN [continuing]. OK—his attorney, Mr. Roger Spaeder, who is here; the parties to the case, their counsel and staff, members of the committee, counsel to the Senate, the committee and the members, Senate staff including persons from the Senate recording studio, the court stenographers, and the Federal Bureau of Investigation audio technicians. Those are the people who are supposed to be here. If there is anybody else here, we need them to leave.

We have a letter regarding the arrangements and procedures that govern Mr. Dredge's appearance before the committee, and that letter will be included in the record at this point. It is a letter from Elaine Stone, counsel for this committee, to Mr. Spaeder, who is the attorney for Mr. Dredge.

[Document follows:]

U.S. SENATE,
IMPEACHMENT TRIAL COMMITTEE
Washington, DC, July 10, 1989.

ROGER SPAEDER, Esq.,
Zuckerman, Spaeder, Goldstein, Taylor & Kolker,
Washington, DC.

DEAR MR. SPAEDER: This letter will confirm our discussions concerning Mr. William Dredge's required appearance, pursuant to subpoena, before the Impeachment Trial Committee on the Articles of Impeachment against Judge Hastings ("the committee"). In an effort to address the concerns which you have expressed concerning Mr. Dredge's personal safety in connection with that appearance, we will make the arrangements described below. Should any need for change in any of those arrangements arise, we will promptly so advise you.

Mr. Dredge's testimony will be taken in the facility which you and I have discussed, which can be accessed by Mr. Dredge without need for him to appear in public areas of the building. That facility provides an area where, if necessary, he can await the giving of his testimony and confer with counsel, likewise without the need to go through any public area.

In advance of Mr. Dredge's appearance, that facility will be closed to the public and the media. All doors to the facility will be secured. The only persons remaining in the facility will be Mr. Dredge and his counsel, the parties and their counsel and staff; members of the committee; counsel to the Senate, the committee and the members; Senate staff; court stenographers and Federal Bureau of Investigation audio technicians. The Senate staff will include persons from the Senate Recording Studio, which is a division of the Senate Sergeant at Arms office, who will be present to videotape Mr. Dredge's appearance before the committee. The facility will remain closed until Mr. Dredge has departed from the facility and the committee has been advised by U.S. Capitol Police, in coordination with the Federal Bureau of Investigation, that Mr. Dredge has left the Senate buildings.

Only one copy of the videotape of Mr. Dredge's appearance before the committee will be made. Neither the House Managers nor Judge Hastings or their counsel will be given a copy of the videotape. Both the original and the copy of the videotape will be stored in a locked safe maintained by the committee. Neither the original nor the copy of the videotape shall leave the custody of the impeachment committee staff until the conclusion of the Senate impeachment proceedings and then only as described in the following paragraph. The committee staff will designate one of its members as custodian for the original and copy of the videotape. The original and/or copy of the videotape shall be available for viewing only by Senators; their counsel and staff; the committee's counsel and staff; the parties and their counsel and staff; and Mr. Dredge and his counsel. When such a viewing occurs, the facility where it takes place will be closed to all persons except those enumerated in the previous sentence. None of those persons will be permitted to remove the original or videotape from the custody of the committee.

At the conclusion of the Senate impeachment proceedings, the original and copy of the videotape will be transferred to the National Archives pursuant to S. Res. 474, sec. 2(b), 96th Cong., 2d Sess (1980), which provides that the committee may prescribe a period of time before which its records can be made available for public use. Here, the period will be fifty years.

Mr. Dredge will be reimbursed for his travel and other expenses, both in connection with the deposition which he previously gave in June of 1989, and in connection with the testimony which he will give before the Impeachment Trial Committee. That reimbursement will be paid in cash on the day of his departure home, and it will be made pseudonomously. As we have discussed, reimbursement for expenses can only be made to cover the period through the last day of his appearance. Compensation for the coming trip will be computed on the same basis as was used for the first trip.

Please advise me if this letter does not accurately reflect the matters which we have discussed, or if I can be of further assistance.

Sincerely yours,

ELAINE W. STONE,
Counsel, Impeachment Trial Committee.

The **Chairman**. I also want to state on the record the committee's position that in spite of the fact that we have a closed session here, the transcript of the proceeding will be made available as soon as it is prepared in the next day or two and will be public.

At this point, unless there is other business to transact—yes, Mr. Anderson?

Mr. **Anderson**. Because the record will be made public, if I could just note and the Chair would confirm that there was objection by Judge Hastings to closing the session, and we were overruled on that objection.

The **Chairman**. There was objection to having a closed session to hear Mr. Dredge, and that objection was overruled.

At this point, is Mr. Dredge available? Can he be brought in to testify?

Mr. **Baron**. Senator, it is my understanding he is in a room somewhere right on the next floor around this building. Someone would simply have to advise him to come in.

The **Chairman**. Tony, can you get the witness in?

Mr. **Harvey**. Yes, sir.

[Pause.]

Mr. **Bryant**. Mr. Chairman, perhaps to keep the record perfectly clear, at this time the House would like to call William Dredge as its witness, and Alan Baron, Special Counsel to the House managers, will conduct the direct examination of him on our behalf.

The **Chairman**. All right.

Mr. **Anderson**. Mr. Chairman, if we might just again note our objection. I will not persist in it, but it was our understanding of Rule 11 that these proceedings are to be conducted as if on the Floor of the Senate, and it has been our understanding that in cases that were tried on the Floor of the Senate, staff to the House managers were not permitted to speak, and that as a practical matter it was the members' responsibility to assume responsibility for representing the House with such staff advice as they wished.

I wish the record at this point would note our objection.

The **Chairman**. The objection will be noted.

Mr. **Anderson**. Excuse me, Mr. Chairman. Could we get a ruling on the objection, too?

The **Chairman**. The Chair overrules the objection based on Rule 15 of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials. This rule states: "Counsel for the parties shall be admitted to appear and be heard upon an impeachment."

Mr. **Anderson**. Thank you, Mr. Chairman.

The **Chairman**. Mr. Dredge, would you please stand and be sworn.

Do you, William Dredge, swear and affirm that the evidence you shall give in the case now pending between the United States and Judge Alcee L. Hastings shall be the truth, the whole truth and nothing but the truth, so help you, God?

Mr. **Dredge**. I do.

The **Chairman**. Please be seated. Proceed.

TESTIMONY OF WILLIAM DREDGE

DIRECT EXAMINATION

Mr. **Baron**. Thank you, Mr. Chairman.

Good morning, Mr. Dredge.

Mr. **Dredge**. Good morning.

Mr. **Baron**. For the record, would you state your name?

Mr. **Dredge**. William Dredge.

Mr. **Baron**. And Mr. Dredge, have you ever met a man named William Borders?

Mr. **Dredge**. Yes, sir.

Mr. **Baron**. When and where do you recall first meeting him?

Mr. **Dredge**. At a friend of mine's apartment in Maryland in March.

Mr. **Baron**. Of what year?

Mr. **Dredge**. Nineteen eighty-one.

Mr. **Baron**. Mr. Dredge, I'd like to show you what have been marked as Exhibits 12 and 13, which are agreed to be the following.

Exhibit 12 is a Delta ticket for William Dredge for March 5th through March 8th, 1981, coupons 01 and 2; and 13 is a Delta airline ticket for William Dredge for March 5th through March 8th, 1981, the auditor coupon.

Let me show these to you. [Handing documents to witness.]

My question, Mr. Dredge, is do those airline tickets reflect a trip by you to the Baltimore-Washington area——

Mr. **Dredge**. Yes, sir.

Mr. **Baron** [continuing]. During the period March 5 to March 8, 1981?

Mr. **Dredge**. Yes, sir.

Mr. **Baron**. Mr. Chairman, I'd like these offered into evidence at this time on behalf of the House.

The **Chairman**. Is there objection to the introduction of these exhibits?

Mr. **Anderson**. No, sir.

The **Chairman**. They will be admitted.

[The documents referred to were marked House Exhibit Nos. 12 and 13 and were received in evidence.]

Mr. **Baron**. Mr. Dredge, was that the occasion on which you met Mr. Borders?

Mr. **Dredge**. No, sir.

Mr. **Baron**. What was that occasion that is reflected with regard to those airline tickets? Why were you up here?

Mr. **Dredge**. I went up to meet this friend of mine, and I advanced him some money.

Mr. **Baron**. All right. And incidentally, what was the name of your friend?

Mr. **Dredge**. Joe Nesline.

Mr. **Baron**. And you advanced him some money on that occasion?

Mr. **Dredge**. Yes, sir.

Mr. **Baron**. Did you have occasion to return to see Mr. Nesline subsequent to lending him the money?

Mr. **Dredge**. Yes, sir.

Mr. **Baron**. Approximately how much later?

Mr. **Dredge**. Three, four days.

Mr. **Baron**. OK. And on that occasion, did you see Mr. Borders?

Mr. **Dredge**. Yes.

Mr. **Baron**. Where was it?

Mr. **Dredge**. At Mr. Nesline's apartment.

Mr. **Baron**. Who was present in the apartment when you arrived?

Mr. **Dredge**. Joe Nesline, John Shorter and Bill Borders.

Mr. **Baron**. Did you know who Mr. Shorter was?

Mr. **Dredge**. Yes, I knew John Shorter.

Mr. **Baron**. Now, during the time you were in the apartment with Mr. Borders, did you have any conversation with him?

Mr. **Dredge**. With Mr. Borders?

Mr. **Baron**. Yes.

Mr. **Dredge**. Yes.

Mr. **Baron**. OK. And can you tell us what he said to you?

Mr. **Dredge**. He said, "You are from south Florida, aren't you?" and I said, "Yes."

He said, "Do you happen to know some people down there by the name of Romano?"

I said, "No, I don't. The name doesn't ring a bell. I can't place them."

And he asked me if I could ascertain who they are and find out what kind of people they were, if they were "stand-up" people.

Mr. **Baron**. "Stand-up" people?

Mr. **Dredge**. "Stand-up" people.

Mr. **Baron**. Keep your voice up a little bit. It is a little hard to hear you.

Did you know the Romanos?

Mr. **Dredge**. No.

Mr. **Baron**. And did you agree to look into the matter for Borders?

Mr. **Dredge**. Yes.

Mr. **Baron**. And did you make any inquiries concerning the Romanos?

Mr. **Dredge**. Yes.

Mr. **Baron**. What did you find out? What inquiries did you make?

Mr. **Dredge**. Well, I talked to two or three people who didn't know him, and I eventually called another person who did know him.

Mr. **Baron**. And who was that individual?

Mr. **Dredge**. Willie Dara.

Mr. **Baron**. Mr. Dara did know the Romanos?

Mr. **Dredge**. Willie Dara.

Mr. **Baron**. OK. And what did Mr. Dara tell you about the Romanos?

Mr. **Dredge**. He told me that there were two of them, it was a set of brothers, and that they was solid people, 100 percent; they was out of the Genovese outfit from Chicago.

Mr. **Baron**. What is the Genovese outfit out of Chicago?

Mr. **Dredge**. It is the Mafia.

Mr. **Baron**. And the Genoveses are a family within that organization?

Mr. **Dredge**. It's a crime family in Illinois.

Mr. **Baron**. OK. What else did he tell you about them?

Mr. **Dredge**. That they were stand-up, 100 percent people, and that in case I didn't know it, they had an ongoing case.

Mr. **Baron**. About how long after your initial contact with Mr. Borders that you described in Mr. Nesline's apartment, approximately how much time passed between that initial contact with Borders and this conversation you've just described with Mr. Dara, roughly?

Mr. **Dredge**. Two, three weeks.

Mr. **Baron**. Now, you used the phrase "stand-up people" both in what Mr. Borders asked you to find out and what Mr. Dara replied to you. Does that have a certain meaning?

Mr. **Dredge**. Yes, if they are trustworthy people, that is, trustworthy people in the underworld.

Mr. **Baron**. OK. Now, did you convey the information you learned about the Romanos from Mr. Dara to Mr. Borders?

Mr. **Dredge**. Yes, I did.

Mr. **Baron**. And how did that communication to Borders take place, if you recall?

Mr. **Dredge**. Joe called me, and——

Mr. **Baron**. "Joe" being——

Mr. **Dredge** [continuing]. Joe Nesline—called me and asked me if—or, told me—that Borders had called him on an occasion or two and wanted to know if he had heard from me, and if it was okay for him, Joe, to give Bill Borders my phone number, and I told him that it was.

Mr. **Baron**. Did you subsequently hear from Mr. Borders?

Mr. **Dredge**. Yes. Borders called me.

Mr. **Baron**. And what transpired when he called you?

Mr. **Dredge**. He asked me if I had found out anything about the Romanos, and I told him yes, that I had, that they were good, solid people, they were a hundred percent, and I hoped that that was what he wanted to know.

Mr. **Baron**. Did you convey to him what you had learned from Dara?

Mr. **Dredge**. Yes. I told him, I said you probably are aware of it—I don't know whether you are—but I understand they have a trial going on, or an ongoing case—whether it was a trial or not, I don't know.

Mr. **Baron**. What if anything did Mr. Borders say to you in response to the information that you had conveyed to him?

Mr. **Dredge**. He asked me if I could get to the Romanos, talk to them and tell them that they had an attorney in Washington who could probably help them with their case; if they had any interest, to get back to me.

Mr. **Baron**. Did you make any effort to convey this information from Mr. Borders to the Romanos?

Mr. **Dredge**. I called Willie Dara and asked Dara if he could set up an appointment for me to talk with the Romanos. He said that he would make an effort.

Mr. **BARON**. To your knowledge did Mr. Dara make such an effort?

Mr. **DREDGE**. He subsequently called——

Mr. **ANDERSON**. Mr. Chairman, if I could object——

The **CHAIRMAN**. Is there an objection?

Mr. **ANDERSON**. Only to the foundation aspect. I think the chronology is fairly critical here, and we are moving through a lot of contacts. To the extent the witness can place those in time, it would, I think, help the record and certainly would help me in thinking what I am going to ask.

I'm not sure when the conversation between Mr. Nesline asking Mr. Dredge whether he could give Mr. Borders a call, when Mr. Borders called, when Mr.—the conversation in which he told him what Dara had said, when he called Mr. Dara again.

I think to the extent this witness has a present recollection of those events, it would be useful if we could lay the correct foundation—time, place, who was present.

The **CHAIRMAN**. Let me just ask counsel to rephrase the question and see if that doesn't answer your objection. Obviously, to the extent that you wish to elicit information that is not elicited by direct examination, you can do that in cross. But if you would restate the question, please.

Mr. **BARON**. The question I had put to you, Mr. Dredge, was whether you had made any effort to convey the information that Mr. Borders had told you to the Romanos.

If I could have the witness answer that question, then I'll try to put some sort of a time frame on it to the extent possible. So let's start with that.

Just to sort of orient ourselves, you had previously testified that you had conveyed the information about the Romanos that you had learned from Mr. Dara to Mr. Borders. Mr. Borders then gave you certain information. Did you make any effort to convey that information that you had learned from Borders to the Romanos?

Mr. **DREDGE**. Yes.

Mr. **BARON**. And what did you do?

Mr. **DREDGE**. I called Dara and asked Dara to set up an appointment, that I'd like to talk to the Romanos. He said that he would. He called me back and told me that the Romanos was out-of-town, they wasn't available, but that their manager, a guy by the name of "Brother", would meet with me at their restaurant.

Mr. **BARON**. Incidentally, is Mr. Dara still alive?

Mr. **DREDGE**. No. Him and his wife both died in a Delta plane crash in New Orleans.

Mr. **BARON**. And approximately how much time had passed—you testified earlier that your initial meeting with Mr. Borders took place sometime, according to the testimony, in the first third of the month of March 1981—approximately how much time passed between that initial contact and the time that we are now talking about where Mr. Dara is trying to set up a meeting with "Brother"?

Mr. **DREDGE**. We must be in the first week or ten days of April by now.

Mr. **BARON**. Now, was a meeting set up with "Brother"?

Mr. **DREDGE**. Yes.

Mr. **Baron**. And where was that meeting initially to take place?

Mr. **Dredge**. At the restaurant that the brothers owned on Hallandale Beach Boulevard.

Mr. **Baron**. When you say "the brothers", now you are talking about the Romanos, correct?

Mr. **Dredge**. That the Romano brothers owned.

Mr. **Baron**. OK. I don't want to get mixed up between "Brother" and "the brothers".

And did you go to that meeting?

Mr. **Dredge**. Yes.

Mr. **Baron**. And what occurred?

Mr. **Dredge**. I picked Willie up, and we went to the restaurant—I believe the name is the Sea Isle Inn or the Sea Breeze Inn or the Sea Inn or whatever. We went there and had dinner; a time frame that "Brother" was supposed to show and he didn't, but we went on with dinner. Subsequently, there was a phone call for Dara. Dara left to get the phone, came back and said that was "Brother", he apologized—now, this is not the Romano brothers, this is "Brother" who I know as "Brother" that is their manager—that he couldn't make the meeting, he was sorry, but he'd like to talk to me tomorrow and wanted to know what kind of car I would be driving in and where we would meet at. And he told me that—or, he told Dara, and Dara told me—that we was to meet at the paint and body shop on Pembroke Road that was west of Federal Highway and that he would be in a brown four-door Lincoln car. I told Dara what car I would be driving.

Mr. **Baron**. And did you subsequently meet with "Brother"?

Mr. **Dredge**. Yes. I met the next day.

Mr. **Baron**. And what was your conversation with him?

Mr. **Dredge**. He was sitting in his car. I got out of my car and went over and said that I was Willie Dara's friend and that I was an emissary for an attorney in Washington, DC who thought that he could help them help the Romano brothers with their case, and if they had any interest in pursuing it, to get back to me.

He said, "How can I get back to you?"

I said, "You'll have to go through Willie Dara, and Willie will get to me."

Mr. **Baron**. Did he indicate any unwillingness to convey that message to the Romanos?

Mr. **Dredge**. No. He told me that he couldn't make any decisions, he couldn't do anything, that he would get hold of them, that they was out-of-town.

Mr. **Baron**. All right. Did "Brother" ever get back to you through Mr. Dara or in any other way?

Mr. **Dredge**. No.

Mr. **Baron**. Did you ever have any contact with either of the Romano brothers?

Mr. **Dredge**. Never.

Mr. **Baron**. After this contact with "Brother", did you have any further discussion with Mr. Borders about what the deal was regarding the Romano situation?

Mr. **Anderson**. Objection, Your Honor. There has been no testimony that there was a "deal" about the Romanos from this witness. That is leading and assumes facts not in evidence.

Mr. Baron. Let me rephrase the question.

The Chairman. Counsel can rephrase that to overcome the objection.

Mr. Baron. After the contact with "Brother", did you have any further discussion with Borders about helping the Romanos with their case?

Mr. Dredge. Yes.

Mr. Baron. Could you describe that? What did Mr. Borders say?

Mr. Dredge. Borders——

Mr. Anderson. Mr. Chairman, again, I am losing track of the time. I don't think this is fair to put this all on me on cross-examination because I intend to challenge the sequence. I would like to know what this witness' recollection is on direct as to when these conversations occurred, whether they were by telephone, in person, in Washington, in Miami or wherever. We are just sort of running down a calendar of conversations which are not fixed in time, place, manner of communication. I do object to that.

Mr. Baron. May I respond?

The Chairman. The objection is overruled.

Counsel will be allowed to go through his own direct examination, and then if you wish to proceed with other matters in cross, you can do so.

The witness can go ahead and respond.

Mr. Baron. I believe the question, Mr. Dredge, was after the contact that you had with "Brother" that you described took place in the first week or ten days of April, did you have any further discussion with Borders about helping the Romanos with their case?

Mr. Dredge. Yes. Borders and I spoke many times, but shortly thereafter when I had to meet with "Brother"—I don't know how long went by; I don't know the time frame; I don't know the date—it may have been that I may have been in Washington. We may have been talking in person. I just don't know.

Mr. Baron. Just respond to my question.

Mr. Dredge. That he could—Borders told me that I should convey to the Romanos that he could help them with their case because the judge handling the case was a friend of his and that he could do things with the judge.

Mr. Baron. Did Mr. Borders, concerning the Romanos, talk to you over the telephone on occasion?

Mr. Dredge. Yes.

Mr. Baron. Did you and Mr. Borders have a system whereby you would communicate in certain ways over the phones; and could you describe that for us if it occurred?

Mr. Dredge. Yes. I don't—again, he had been talking to me about the Romanos, and in person he said to me, "You know, we've got to get a system together because I don't want to talk on my phone; I don't want you to talk on your phone. You may have a problem on your phone; I may have a problem on my phone. I'll give you a set of pay phone numbers; you give me some pay phone numbers."

Mr. Anderson. Mr. Chairman, could I again just have a standing objection to the way in which this direct is there. I assume it will be overruled, but at least the record should reflect that I do not think this is proper direct on behalf of this——

The **Chairman**. On what basis do you think this is not proper direct?

Mr. **Anderson**. One, I do not think any foundation for these speculations—the witness does not recall time and place. I don't know where we are. Two, I think there is hearsay running through this. Three, I am not sure the relevance has yet been established. But my primary question right now is the chronology, time, place, manner of discussion to the extent this witness recalls it should be laid before the conversation is introduced.

That is my objection. It will be a persistent objection if this continues. I don't want to interrupt Mr. Baron's flow. If the record would reflect that I asked for a standing objection on those grounds and the Chair would rule on it, I'll sit down and let him go.

The **Chairman**. The objection is overruled.

I would ask counsel to be as clear as possible in his questions to pin down times and places so that the committee can follow that. But the witness can go ahead and respond.

Mr. **Anderson**. And my objection is a standing one, so I don't have to keep popping up and down.

The **Chairman**. We understand that.

Mr. **Anderson**. Thank you, Mr. Chairman.

The **Chairman**. Would you restate your last question?

Mr. **Baron**. Did Mr. Borders work out a system with you whereby you communicated with each other over the telephone?

Mr. **Dredge**. Yes. We worked it out together. I was to give him a list of phone numbers for a bank of phones in a couple of locations, which I did—one set of phones being at the Jefferson Shopping Center, another bank of phones being at the Dadeland Mall.

Mr. **Baron**. And can you describe how it would work?

Mr. **Dredge**. He would ring me at the house and ask me to go to Dadeland—I knew then that I should go to a pay phone and ring him, or he would ring me there at the pay phone; he had the numbers—or to go to Jefferson, he would ring me.

If I wanted to get hold of him, I called him and told him to go to either the first set of phones or the second set of phones.

Mr. **Baron**. Did Mr. Borders contact you in this manner, with this mutual pay phone arrangement, concerning the Romanos?

Mr. **Dredge**. Continuously, continuously. Only about the Romanos. I had no other business with him.

Mr. **Baron**. Mr. Dredge, I'd like to show you what have been marked as House Exhibits 10 and 11.

Mr. Chairman, they have been stipulated to be—Number 10 is telephone bills for telephone number Area Code 305-945-9939; it is a telephone number, the name of Howard Schlosser, S-c-h-l-o-s-s-e-r. These are records covering the period January 1, 1981 through December 15, 1981.

Number 11 are telephone bills for Area Code 305-841-0737. These are business telephone records for a place called "Bill's Place", an antique store, for the period March 14th, 1981 through November 30, 1981.

The **Chairman**. Is there objection to those exhibits being introduced?

Mr. **Anderson**. No, indeed, there is not.

The **Chairman**. They will be introduced, they will be admitted.

[The documents referred to were marked House Exhibit Nos. 10 and 11 and were received in evidence.]

Mr. **Baron**. Mr. Dredge, referring you to what has now been admitted in evidence as House Exhibit Number 10, would you take a look at that, please?

The name Howard Schlosser appears as the subscriber for that telephone. Was that your phone?

Mr. **Dredge**. That's my phone, my home.

Mr. **Baron**. And the telephone number?

Mr. **Dredge**. 945-9939.

Mr. **Baron**. Area Code 305?

Mr. **Dredge**. Right.

Mr. **Baron**. Take a look at the next Exhibit 11.

Mr. **Dredge**. That also is my phone at my place of business.

Mr. **Baron**. Mr. Dredge, when you were away from Miami, did you have occasion to call home or to your store?

Mr. **Dredge**. Frequently.

Mr. **Baron**. And what was your practice concerning charging calls?

Mr. **Dredge**. I would call collect.

Mr. **Baron**. Now, you previously testified about this telephone arrangement that you had with Mr. Borders with the pay phones—I'd like to pick up there—that he would call you about the Romanos over those phones?

Mr. **Dredge**. Yes.

Mr. **Baron**. All right. Can you describe for us the dialogue that you had with Mr. Borders concerning the Romanos?

Mr. **Dredge**. He would call and ask if I had spoken with them, and I told him yes that I had. And he wanted to know if they were willing to do business, and I indicated to him that they were.

Mr. **Baron**. In fact, were you in touch with the Romanos?

Mr. **Dredge**. No.

Mr. **Baron**. Did you give him any reason why they had not gotten back to him?

Mr. **Dredge**. Yes. I told him—first of all, let me—I can talk, right?

Mr. **Baron**. Please. That's why you are here.

Mr. **Dredge**. He told me that—and in one of the conversations in person—that the Romanos' case was before this Federal judge, Alcee Hastings, and that he could help them with their case through Hastings. I didn't believe him. By the same token, I knew that he had had a position of some sort in the Government—I didn't know what it was—and that because of Nesline. I was doing Nesline a favor, so I continued to go with it, and I told Borders that they had already been beaten for $50,000.

Mr. **Baron**. What do you mean by "beaten for $50,000"?

Mr. **Dredge**. That somebody else had a connection with the judge and that they had already given up $50,000 for helping their case—which in fact wasn't true. This was me talking, because I never spoke to the Romanos.

Mr. **Baron**. What was Mr. Borders' response when you told him that?

Mr. **Dredge**. He said that it's impossible, that there was nobody else that could do business with the judge but him. And I said well, they have already been beat for $50,000. He said, "Well, I'd hate like hell to be in their shoes when it is found out."

Mr. **Baron**. In whose shoes?

Mr. **Dredge**. In whoever the guy was that ripped them off for the $50,000, that they'll be found laying in the street somewhere.

Mr. **Baron**. Did there come a time when you were charged in Maryland on drug charges?

Mr. **Dredge**. Yes.

Mr. **Baron**. I will show you what has been pre-marked as House Exhibit Number 14 and ask if you recognize it.

Mr. **Dredge**. Yes.

Mr. **Baron**. What is that?

Mr. **Dredge**. That's an indictment for me for conspiracy to distribute drugs in a Federal case.

Mr. **Baron**. And just so the date of this is clear, could you just read into the record the date that appears at the bottom?

Mr. **Dredge**. Well, it was filed the 29th of April, 1981, but I wasn't aware of it.

Mr. **Baron**. I'd like to move the admission of House Exhibit 14 into evidence.

The **Chairman**. Is there any objection?

Mr. **Anderson**. No.

The **Chairman**. It will be admitted.

[The document referred to was marked House Exhibit No. 14 and was received in evidence.]

Mr. **Baron**. Were you arrested on those charges?

Mr. **Dredge**. Yes.

Mr. **Baron**. And when and where did that take place?

Mr. **Dredge**. At my house in North Miami, 970 Northeast 152nd Street, on May the 10th, a Sunday afternoon.

Mr. **Baron**. And that was in Miami?

Mr. **Dredge**. Yes.

Mr. **Baron**. Now, prior to that date, May the 10th, did you believe that Mr. Borders could control a Federal judge?

Mr. **Dredge**. Let's say that I was dubious prior to May the 10th. But the morning of May——

Mr. **Baron**. Well, let me ask what made you dubious about that.

Mr. **Dredge**. Well, I have heard all my life—I am born and raised in Washington, DC—I have heard that a zillion people had Federal judges. Nobody ever proved it. Nobody ever was charged. But it was a tale, and I thought it was absolutely incredulous that anybody had a Federal judge anywhere at any time.

But at the same token, keep in mind that I know that Borders has an important position because he was given a position by the President of the United States.

Mr. **Baron**. Did something occur at this time which caused you to change your mind about Borders' relationship with Hastings?

Mr. **Dredge**. Run that by me again.

Mr. **Baron**. Did something occur—the date you were talking about was the date you were arrested, May the 10th—did something occur around that time—let me finish my question—which caused you to change your mind about Borders' relationship with Hastings?

Mr. **Dredge**. Well, to change my mind, yes, it made it in concrete that he had something with the judge. He called me the Sunday morning that I was arrested and asked me to go out and call. I did. And he told me on the phone—he told me that morning, the morning that I was arrested, May the 10th—that, you know, the judge can't believe these guys can't come up with the money. I think it is incredulous. You are talking about my people who have zillions of dollars; they can get their hands on anything. You're not talking about important money to these people, and tomorrow morning, they was to be sentenced. He was not going to sentence them for—come hell or high water, the case was going to be continued, going to be postponed.

Mr. **Baron**. How did Mr. Borders contact you about this conversation?

Mr. **Dredge**. He called me on the phone.

Mr. **Baron**. Now, did you have counsel represent you in Miami after you were arrested on the 10th of May?

Mr. **Dredge**. Yes.

Mr. **Baron**. Who was your lawyer in Miami?

Mr. **Dredge**. Jesse McCrary appeared for me at the Federal Magistrate's Office the next day.

Mr. **Baron**. And how did you get to Mr. McCrary?

Mr. **Dredge**. From Bill Borders.

Mr. **Baron**. Borders arranged that for you?

Mr. **Dredge**. Yes, sir.

Mr. **Baron**. All right. Now, at the time you were arrested, did you know if your case was going to be tried in Miami or in Baltimore?

Mr. **Dredge**. I assumed that it would be in Miami because that's where I lived and that's where I was arrested.

Mr. **Baron**. All right. Now, did Borders ever discuss with you whether the Romano case had in fact been postponed?

Mr. **Dredge**. It was either—now, the Monday, which was the following day, is the day that I had the bond hearing in front of the Federal Magistrate that Jesse McCrary appeared for me. And I was released on personal recognizance that day. The only hang-up was that I had to give my passport to McCrary, and he was to notify the Magistrate that he had my passport, which I did. I went to the bank, got the passport, took it back down to McCrary's office and gave it to him.

The next day, Bill called me and told me, "You know, in fact, my man performed. The case was postponed."

I said, "Great. I'm sure that they're happy."

Mr. **Baron**. Now, Mr. Dredge, you quoted Mr. Borders as saying that the case would be postponed when he spoke to you on the 10th, come hell or high water. Did he indicate to you how he understood mechanically it was going to come about?

Mr. **Dredge**. Yes; the judge was going to postpone it on his own with no help from anybody. He was postponing it, and if they didn't perform, come up with the money, that the next time the hammer would fall.

Mr. **Baron**. OK. Now, I'd like you to listen to me carefully for this question. It is in evidence and it is undisputed that on the 11th of May, Judge Hastings did continue, postpone, the sentencing that was scheduled in the Romano case. However, he, Judge Hastings, did not on his own—the phrase you may hear is *sua sponte*—postpone the case. It was not done on his motion, but in response to an oral motion by counsel for the Romanos——

Mr. ANDERSON. Mr. Chairman, is Mr. Baron testifying?

Mr. BARON. No. I'm laying the predicate for a question, and everything I have said here is undisputed and in the record.

The CHAIRMAN. I believe the statements being made have been stipulated to as part of yesterday's testimony.

Mr. ANDERSON. Well, they have been admitted into evidence, but they haven't been planted in this witness' head yet. This is leading this witness, giving him information he doesn't have to aid him in the chronicle that is now emerging. I do object to it.

Let's get this witness' recollection, and we'll put the evidence together after the trial is over.

The CHAIRMAN. I think counsel can complete the question and then go ahead and the witness can respond.

The objection will be overruled to that extent.

Mr. BARON. I'm going to begin again with that question.

It is undisputed that on the 11th of May, the Romanos were scheduled to be sentenced, and Judge Hastings postponed the sentencing.

It is also undisputed that it was not done on the judge's own motion. It was done in response to an oral motion that was made by Neal Sonnett, who was counsel for the Romanos, at approximately 1:30 or so that afternoon when they appeared before the judge for sentencing.

Had you learned that fact in 1981, would that have changed your view about whether Mr. Borders had a connection with Judge Hastings?

Mr. ANDERSON. Objection.

We are inviting this witness, whose recollection has, to say the least—I don't think it will be disputed—differed from time to time, to now speculate about how he would have felt in 1981 had he learned the facts that Mr. Baron has told him. That is speculation and is improper. I just object most strongly.

I understand the committee has ruled that trial rules of evidence will not be strictly applied. This one, I submit, ask the committee to determine whether it could be applied at all.

The CHAIRMAN. The objection will be sustained.

Mr. BARON. I want to direct your attention to early July 1981. Did you have occasion at that time to be in Mr. Nesline's apartment in the Washington area?

Mr. DREDGE. Yes.

Mr. BARON. Mr. Chairman, I'd like to refer at this point to Exhibits 17, 18, 19 and 24. It is agreed that 17 has been authenticated as an Eastern Airlines reservation record for William Dredge dated July 7th, 1981. Eighteen is an Eastern Airlines reservation record for William Dredge dated July 9, 1981. Nineteen is an Eastern Airlines ticket number 8352:834:885 Coupon 1 issued to William Dredge for July 7, 1981. And Number 24 is the Order that was entered in the case of *Borders v. Reagan*, dated July 7, 1981.

I would like to offer these at this time.

Mr. ANDERSON. No objection.

The **Chairman**. No objection. They are admitted.

[The documents referred to were marked House Exhibit Nos. 17, 18, 19 and 24 and were received in evidence.]

Mr. **Baron**. Mr. Dredge, those items that I just referred to, do you know now approximately when in early July you met with Mr. Nesline at his apartment?

Mr. **Dredge**. July 7th.

Mr. **Baron**. And did anything occur with regard to a case that Mr. Borders had on or around that time?

Mr. **Dredge**. Well, it was that day that Mr. Borders was given a favorable decision that whatever job he held, that he continued to hold, and he was extremely happy and elated that he had just beat the President of the United States.

Mr. **Baron**. Did he discuss what the nature of that job was that he had?

Mr. **Dredge**. That he could still make judges.

Mr. **Baron**. Something to do with appointing judges?

Mr. **Dredge**. I don't know what his—I have never known, really, what his job was or what his appointment was, except that he was a judge-maker.

Mr. **Baron**. Where did you stay on that occasion when you were in the Washington area?

Mr. **Dredge**. At Nesline's.

Mr. **Baron**. At his apartment?

Mr. **Dredge**. Yes.

Mr. **Baron**. All right. Do you recall Mr. Nesline having another guest on that occasion?

Mr. **Dredge**. Yes.

Mr. **Baron**. Did you determine who that other guest was?

Mr. **Dredge**. Well, it was a guest that I recognized as being Santos Trafficante, but that is not the name that he was introduced to me as.

Mr. **Baron**. He was introduced to you under a different name?

Mr. **Dredge**. Yes.

Mr. **Baron**. Did you have any doubt as to who it was, in fact?

Mr. **Dredge**. Absolutely not.

Mr. **Baron**. Had you ever been introduced to Mr. Trafficante before?

Mr. **Dredge**. I don't believe so.

Mr. **Baron**. Had you ever seen him before?

Mr. **Dredge**. Yes.

Mr. **Baron**. Who was Mr. Trafficante?

Mr. **Dredge**. Mr. Trafficante—well, he was; he's not anymore; he is dead; he was the boss of Florida for the Mafia, or for the crime family, whatever. He had formerly been the chief of the gambling operations under Battista in Cuba at the Hotel Nacional for the outfit.

Mr. **Baron**. Are you familiar with the operations of the mob in Florida?

Mr. **Dredge**. Pretty much so.

Mr. **Baron**. Do you have an opinion as to what were the likely consequences if someone was found to have cheated Mr. Trafficante out of a large sum of money?

Mr. ANDERSON. Objection. He hadn't met Mr. Trafficante. By hearsay he apparently knows—which I take it most of us do—who Mr. Trafficante has had to have been. There has been no foundation that he has knowledge as to what would have happened. His opinion would be speculative.

The CHAIRMAN. The objection is overruled.

Mr. BARON. You may answer.

Mr. DREDGE. Yes, you'd find yourself in a barrel somewhere, in cement—which has happened in Florida.

Mr. BARON. Now, on this occasion when you were in——

Mr. ANDERSON. Mr. Chairman, could I—the fact it has happened in Florida is something that even I am aware of in my naivete—but is this witness testifying that Mr. Trafficante put someone in a barrel in Florida, of his own knowledge?

Mr. DREDGE. No, sir.

Mr. BARON. Why don't you elaborate, Mr. Dredge?

Mr. ANDERSON. Yes, do.

The CHAIRMAN. Mr. Dredge, you can go ahead and expand on that answer if you want.

Mr. DREDGE. For personal safety, I'd rather not.

The CHAIRMAN. Proceed with your next question.

Mr. BARON. On the occasion that Mr. Trafficante was in the apartment with you, in Mr. Nesline's apartment on July 7th, that period, did you observe any contact between Mr. Trafficante and Mr. Borders?

Mr. DREDGE. Yes. He had a meeting with Bill Borders——

Mr. BARON. "He" being Trafficante?

Mr. DREDGE [continuing]. Trafficante, or the fellow who was introduced to me under another name but I knew to be Trafficante—had a meeting with Bill Borders and was at Joe's apartment to try to find out where he was at.

Mr. BARON. Where Borders was at?

Mr. DREDGE. Yes.

Mr. BARON. OK. And what did you observe—tell us.

Mr. DREDGE. Well, Trafficante had a meeting with Bill Borders. Bill Borders didn't show up at whatever meeting he was at, or was supposed to be, or wherever. Anyhow, he didn't appear. The phone number that Trafficante had, he could not reach Borders. He came to Nesline's to attempt to find out where—if Joe had any numbers that could locate Borders.

Joe tried the numbers that he had, and then Joe asked me if I had any numbers that was different from the numbers that he had. And one number that I had did reach Bill Borders, and Nesline gave the phone to Trafficante, and Trafficante and Borders made a meet. Trafficante called a cab and left the apartment.

Mr. BARON. Did you observe Mr. Trafficante any more during that time period?

Mr. DREDGE. That same day. Joe went to pick up Trafficante at a hotel—and I don't know what hotel, I don't recall—and we went to dinner on Connecticut Avenue at Duke Ziebert's.

Mr. BARON. And who is the "we" that you are referring to?

Mr. BARON. Joe's wife, Becky, and I drove in one car—Joe had already left to pick up Santos—and we all met, the four of us met, at Duke Ziebert's.

Mr. **Baron**. Did you all have dinner together?

Mr. **Dredge**. No. Joe and Santos sat at one table, and Becky and I sat at another.

Mr. **Baron**. Mr. Chairman, I'd like now to refer to House Exhibits 20, 21 and 22. I believe it is agreed they are the following. Twenty is an Eastern Airlines reservation record for William and Lorraine Dredge for the period July 16th to 18th, 1981. Twenty-one is an Eastern Airlines ticket number 1225:325:511, Coupon 1, issued to William Dredge for July 16, 1981. And Exhibit 22 is Eastern Airlines ticket number 1225:325:512, Coupon 1, issued to William Dredge for July 16, 1981.

The **Chairman**. Is there objection to those—are those being offered into evidence?

Mr. **Baron**. Yes, they are.

The **Chairman**. Is there objection?

Mr. **Anderson**. No objection.

The **Chairman**. They will be admitted.

[The documents referred to were marked House Exhibit Nos. 20, 21 and 22 and were received in evidence.]

Mr. **Baron**. Mr. Dredge, we have just admitted into evidence certain airline records which indicate that you had reservations to fly from Miami to Washington and returning to Miami the period July 16th to the 18th, 1981. Were you in the area during that period?

Mr. **Dredge**. Yes.

Mr. **Baron**. What was the reason you came up?

Mr. **Dredge**. Joe called me and asked me if I could come up, that he wanted to talk to me.

Mr. **Baron**. This is Joe Nesline?

Mr. **Dredge**. Joe Nesline.

Mr. **Baron**. And you came up in response to that?

Mr. **Dredge**. Yes.

Mr. **Baron**. What occurred when you got up here?

Mr. **Dredge**. Nesline picked us up at the airport; we drove to his apartment. I left my wife with his wife, and then Joe and I left and went down to Pennsylvania Avenue, I think, 14th and Pennsylvania or 15th and Pennsylvania Avenue, where there was a video arcade that Joe was part owner of, and we was there for a while.

Subsequently, there was a phone call for Joe. Joe got the phone call, come back out and said to me that he got to get back to the apartment, that Trafficante was coming in.

Mr. **Baron**. What happened then?

Mr. **Dredge**. We drove back to the apartment. When we got back to the apartment Becky and Lorraine were leaving——

Mr. **Baron**. Becky is——

Mr. **Dredge**. Nesline's wife; Lorraine is my wife. They were leaving, and Becky told Joe that the man is upstairs in the apartment. Joe and I went up to the apartment.

Mr. **Baron**. I believe you testified by saying you came up here because Joe Nesline said he had to talk to you.

Mr. **Dredge**. Yes—well, let me back up a bit, then.

We dropped Lorraine off at the apartment, and Joe and I drove down—this is in Bethesda; it is not in Washington, by the way——

Mr. **Baron**. Right.

Mr. **Dredge** [continuing]. And we drove down to where he had the store. And Joe asked me—he'd like to know what I thought, wanted my opinion—he said that Trafficante wanted him to be the money man between him and Borders. And Joe said he didn't feel good, didn't feel right—"What should I do?" He said, "I know that you've got something with Borders. I don't know what it is, but I'm telling you what mine is, and what should I do? What do you recommend?"

Mr. **Anderson**. I'm going to object on hearsay grounds here. This is apparently being offered to prove the truth of the matter asserted, and this witness is reciting what Joe told him on a time in 1981.

Mr. **Baron**. It is not being offered for the truth. The fact that he was told this, this is part of the information that Mr. Dredge picked up about what was going on between Trafficante and Borders. We are not vouching for the truth of what Mr. Nesline said, but the fact that he said it, are parts of the information on which he—were the predicate for certain acts undertaken by Mr. Dredge.

Mr. **Anderson**. May I respond?

The **Chairman**. Mr. Anderson?

Mr. **Anderson**. This information has no relevance to this case apart from the fact of its truth. I understand that hearsay may be offered. If I shout, "The sky is falling," it is simply you all heard me utter a loony remark; it isn't to be offered to prove that the sky in fact is falling.

Mr. Nesline's report, alleged report, to Mr. Dredge about dealings between he and Trafficante and Borders, I submit have no relevance here except for the truth of the matter being asserted and that their prejudicial effect would anyway vastly outweigh.

Mr. Trafficante is dead, and it is not Judge Hastings' fault that we are here in 1989 rather than 1981. I don't get a crack at Mr. Trafficante.

Mr. **Baron**. May I respond, Mr. Chairman?

The **Chairman**. Yes. Please do quickly, and then I'll rule.

Mr. **Baron**. All right. Well, first of all, it is not being offered for the truth. It is relevant that this is what he heard was going on between Borders and Nesline and Trafficante. Beyond that, it is highly relevant. One of the defense that we've heard in this case on behalf of Judge Hastings is, oh, this was just a rainmaking scheme; it was a scam in which Borders was the only guy who was doing this thing on his own, and it had nothing to do with the judge.

We have already heard testimony from this witness that if you scammed Mr. Trafficante, you were dead. So I think that it goes to the whole defense here as to what Borders' connection was with Judge Hastings and his ability to produce.

The **Chairman**. The objection is overruled. The witness can proceed to describe the conversation that he had.

Mr. **Dredge**. Joe asked me what my advice would be to him, and I said to Joe, "Joe, are you involved with him in any way shape, form or fashion at this point?"

He said, "No."

I said, "Well, stay the hell out of it. Keep away from it. Don't be bothered with it."

Then we continued on to the video machine place that Joe owned. After we were there a while, as I testified just a moment ago, Joe got a call, and when he came from the office said that that was Trafficante, he is going to be at the apartment.

We left to drive back to the apartment. In the basement under the apartment, Becky Nesline and Lorraine, my wife, were leaving just as we pulled in. They had parking places next to one another in the basement. And Becky said that the man is upstairs.

We went upstairs, and I—it is an awful big apartment, and there is a big living room and a TV and a sitting area—it is all together, but a very big room—and I did not sit with Joe and Trafficante. Joe told Trafficante he was not going to get involved in any way, shape, form or fashion, would not be involved in it; he wasn't going to do anything and he had no intentions of doing anything.

Trafficante then got on the telephone——

Mr. **Anderson**. Mr. Chairman, a point of clarification. I thought Mr. Dredge just said he didn't sit with them, and it was a large apartment, but now he's telling us what Joe told Trafficante and what Trafficante told Joe. I mean, either he heard it or he didn't.

The **Chairman**. Is this an objection to the testimony?

Mr. **Anderson**. It's an objection to foundation. The witness said he wasn't where he could hear it, and now he's giving us a report. I'd like to know how he learned it.

Mr. **Dredge**. I didn't say that I was in a place that I couldn't hear it. What I said was that it was a big apartment, and the living room is—not as big as this, but a big apartment. They were there. I was here. I could hear Joe tell Trafficante he was not going to be involved in anything.

I never said that I didn't hear anything. That's his words, not mine.

Mr. **Anderson**. May I have a continuing objection—I agree he has cured the foundation—may I have a continuing objection on hearsay, just so the record reflects it?

The **Chairman**. Your continuing objection has been stated before.

If you have any more to add on that conversation, go ahead.

Mr. **Dredge**. Yes. Trafficante then got on the phone and called Bill Borders. Why do I know that he called Bill Borders? Because I heard him say to Borders—I mean, it's not that everything is secret from me; I just was not involved in it—and said to Borders that, "We'll have to make new arrangements. Nesline is not going to be involved anyway. I'll get back to you when I get to Tampa. A guy by the name of Gonzales will get hold of you; he will be the man." Hung the phone up.

Nesline and I drove Trafficante to Baltimore-Washington Airport where he got on—excuse me. He then called the airline, because he had later reservations, and he called and updated them to an earlier time, and Joe and I drove him to B-W Airport, which is where he left.

Mr. **Baron**. Now, during the time period that you were in the Baltimore-Washington area that we're talking about now, did you have occasion to meet with Mr. Borders while you were up here?

Mr. **Dredge**. Yes.

Mr. **Baron**. OK.

Mr. **Dredge**. I went to Borders to pick up some papers from my case that he had from Baltimore. By this time I had retained Roger Spaeder and Peter Kolker as my attorneys to represent me there. And whatever papers that Borders had, I went there to get, to retrieve, to give to my attorneys.

Mr. **Baron**. Prior to this time, had you ever had occasion to see Judge Hastings, just to see Judge Hastings?

Mr. **Dredge**. Yes. I seen Judge Hastings—and I'm not sure what hotel. I don't recall whether it was the Hilton hotel or the Wardman Park and/or the Mayflower. I'm just not sure which hotel it was. As a matter of fact, I seen him on two occasions, and I can't put them in proper sequence of when they were, at hotels, one being the Hilton and the other one either the Mayflower or the Wardman Park.

I went there to meet Borders. Borders was there for whatever reasons, and he could not leave, and we had an appointment, and I met Borders at the hotel.

While at the hotel—when I went to meet Borders, Hastings was there. Was he with Borders? No. Did I see them together? No. I seen him walking through.

Mr. **Baron**. Was there ever an occasion when you saw Judge Hastings and Borders together while you were in the Washington area?

Mr. **Dredge**. At Borders' office.

Mr. **Baron**. Can you describe that occasion?

Mr. **Dredge**. I had a meeting with Borders. I went to Borders' office, which was on 16th Street—it used to be a house, a stone building, a beautiful building. Borders' office was on the second floor. There is a big set of steps that come down. Let's for instance say they come down this way. The secretary sits over here; the front door is here; the back door is through here, and Borders and I came in. Judge Hastings was talking to the secretary and was sort of with his hands leaning across the desk talking to her. And Borders said to me—we was probably from here to, say, Mr. Specter from the judge, and he was leaning on the desk, talking to the secretary—and Borders said, "This is Judge Hastings." And Judge Hastings turned around and smiled, and that was it.

Then Borders and I continued on out and went into the back room—excuse me—into the back alley.

Mr. **Baron**. Now, the testimony you gave earlier left off around the dates July 16 to 18, that time frame. Subsequent to that date, did you have occasion to go to the offices of the United States Attorney in Miami?

Mr. **Dredge**. Yes, on July 20th.

Mr. **Baron**. So it was almost immediately after this meeting in the Washington area—we're talking about 16 to 18.

Mr. **Dredge**. Probably a day or two.

Mr. **Baron**. OK. What transpired there?

Mr. **Dredge**. I went to the Strike Force, I believe it was, and went in and told—I didn't identify myself—I don't know who—I wanted to speak to somebody in charge. I spoke to some guy and told him that I had information I thought they would be interested in the *Trafficante* case. He and another guy came out, or a lady, and then subsequently another lady came out, and I was taken into the office with this lady.

Mr. **Baron**. And as best you recall, what did you tell the lady?

Mr. **Dredge**. This lady—the second lady—she—I don't know her name—told me that she was; what could I tell her. And I said that it had to do with the Trafficante case, and that there was a very prominent lawyer from Washington, DC who was coming down to meet with Trafficante and that I had a problem in Maryland, and I wanted to alleviate my problem in Maryland, and if they would alleviate my problem, I would give them some information.

Mr. **Baron**. Did you give them any additional information than what you've just described concerning what you knew?

Mr. **Dredge**. Yes, I did. I also told them—I don't know whether it was that morning or that afternoon, or it could have even been the next day, because I was there twice, I believe, maybe three times—two times in one day and once the next day. By the second day, they already knew who I was because I had told her—she said, "You know, if you want us to help you with your problem in Maryland, you've got to tell us who you are," which made sense. So I told her my name—this must have been later the first day—and that this prominent lawyer was coming down to meet Trafficante, and this prominent lawyer also was involved with the Federal judge in a case with the Romano brothers, and that for $150,000 or $100,000, he was going to straighten that case out.

Mr. **Baron**. "That case" being——

Mr. **Dredge**. The *Romano* case.

Mr. **Baron**. All right. And what if anything did you tell the woman concerning this prominent lawyer's reason for coming down to see Trafficante?

Mr. **Dredge**. Well, it was my understanding he was coming down to solidify their deal, or to get paid, or to meet or to make—I don't know exactly why he was coming down. Borders didn't tell me exactly why he was coming down, just that he was coming down, and he wanted me to pick him up.

Mr. **Baron**. All right. And were you seeking anything from the Government?

Mr. **Baron**. Absolutely.

Mr. **Dredge**. What did you ask?

Mr. **Dredge**. I had a problem in Baltimore, and I wanted that problem in Baltimore resolved, and for resolving my problem in Baltimore, I would give them what information I had regarding the *Romano* case.

Mr. **Baron**. OK. Now, you have dated your initial contact with the Government July 20th, 21st, right in that period, correct?

Mr. **Dredge**. Yes.

Mr. **Baron**. All right. Now, during the months of July and August 1981, after you had gotten in touch with Federal officials, did you maintain contact with Mr. Borders?

Mr. **Dredge**. Yes, I did.

Mr. **Baron**. And what was the nature of your contact with Mr. Borders?

Mr. **Dredge**. Well, now it was to my advantage now to keep him interested in the Romanos, because I was looking for something from the Government. And I told him that—at some point in time, I told him that they now had another guy.

Mr. **Baron**. "They" being——

Mr. **Dredge**. The Romanos had another man that could get to the judge.

Mr. **Baron**. OK. And what was Mr. Borders' response?

Mr. **Dredge**. "Absolutely impossible. I'm the only guy that the judge has. And the proof of it is, if you want, tell the Romanos to tell the fellow who now claims to have influence with the judge to have the judge show up at some specific point at some specific time, tell me where to have the judge at some specific point at some specific time, and see which one the judge shows up at."

Mr. **Baron**. OK. During this period, was Mr. Borders still interested in making a deal with the Romanos if it were possible?

Mr. **Dredge**. Yes, he was.

Mr. **Baron**. Did there come a time when you advised the FBI about any further contact in Miami between Borders and Trafficante that you were aware of?

Mr. **Dredge**. I told the FBI that—by now we are trying to work this deal out with me—and I told them that whatever I knew or heard or found out about the Trafficantes, I would keep them posted. And Borders told me that he was coming down.

Mr. **Baron**. Do you have any recollection of approximately when this was?

Mr. **Dredge**. This might have been in late August.

Mr. **Baron**. OK. Let me direct your attention to the end of August, August 31, 1981. Do you recall having contacts with the FBI concerning your relationship with Borders and the Romano deal?

Mr. **Dredge**. Yes. I was confident that I could put an agent—I could introduce an agent to Borders as a Romano.

Mr. **Baron**. Well, what gave you that opinion? What led to that conclusion on your part?

Mr. **Dredge**. Well, remember now, I am keeping Borders now on the hook. I have an ulterior motive at this point in time, because I have a problem. And I told Borders that these guys were now willing to do some business. Borders asked me to make a meet with both or one of the Romanos, and I knew that I could.

Mr. **Baron**. Had Mr. Borders ever indicated the amount of money that was in question with regard to the Romano deal, if you recall?

Mr. **Dredge**. Oh, yes. In these conversations with Borders, he could not believe—it was incredulous that these guys didn't come up with $150,000. They stood to gain a lot more, not only in the question of going to the penitentiary, but in the question of getting their property back. And part of the deal would be that they would get part of their property back, or all of their property, which I think was $1 million or some such figure—that's my best recollection—and that they would get it back if these guys would perform.

Mr. **Baron**. Did there come a time when you contacted Mr. Borders in the presence of the FBI and at their request regarding what you had told him about the Romano situation?

Mr. **Dredge**. Yes.

Mr. **Baron**. And what did you do?

Mr. DREDGE. I called Bill, told Bill that——

Mr. BARON. "Bill?"

Mr. DREDGE [continuing]. Bill Murphy of the FBI; he was there—Bill Murphy and I were together. I called Bill Borders and told Bill Borders that the brothers were ready to meet him, to make a deal, to iron it out, and they would like to meet. And he said, well, he only wanted to meet with one and to make a meet. And he set up a meet then for two days down the road, and that he would meet at the airport at a prescribed time, the morning of I believe it was September the 12th.

Mr. BARON. OK. And what was your role in all of this?

Mr. DREDGE. My role was to introduce the undercover agent as being Romano—I think Frank Romano, but I'm really not sure.

Mr. BARON. Did you make that introduction at the airport?

Mr. DREDGE. Yes, I did, at the airport.

Mr. BARON. OK. After you made the introduction, did you continue—

Mr. DREDGE. I walked away.

Mr. BARON [continuing]. Let me finish my question—after you made the introduction, did you continue to be involved in what was going on that morning?

Mr. DREDGE. No. I walked away.

Mr. BARON. OK. Did you have any subsequent contact with Borders after having made that introduction and walking away?

Mr. DREDGE. Yes. It might have been later that evening, but it could have been the next day, but I tend to believe that it was later that evening. He called me and told me that they had gotten along fine, everything was going along great and that I needn't bother with anything, that he would take care of everything from this point forward.

Mr. BARON. Subsequent to that, did you ever have any contact with Mr. Borders?

Mr. DREDGE. Yes, a while later, two or three weeks or whatever—I'm not sure of the time—but he called me and told me that he had bad vibes about this guy.

Mr. BARON. Who is "this guy" that he is referring to?

Mr. DREDGE. Romano.

Mr. BARON. The guy he thinks is Romano.

Mr. DREDGE. The guy that he thinks is Romano, and that he was having bad vibes; that the guy was pushing him and wanting him to do too many things or too fast or whatever. And I said, "Bill, if you've got any reservations, take a walk." And he said, "Well, if the guy's 100 percent"—I said, "Hey, I'm telling you what was told to me. The guy is supposed to be fine." And that was the last conversation I had with Bill Borders.

Mr. BARON. Mr. Dredge, during the time when Borders was talking to you about the Romano deal over these months, and you in fact were not in touch with the Romanos as you have testified, why didn't you just tell Borders you hadn't heard from the Romanos and just let the thing drop?

Mr. ANDERSON. Objection. It calls for speculation.

Mr. BARON. It's not speculation.

Mr. ANDERSON. Over the months, why didn't he?

The **Chairman**. Objection. It is overruled. The witness can answer the question.

Mr. **Dredge**. Well, frankly, I think I answered it earlier on. First of all, because of Joe, I was doing this for Borders, not believing really after I knew that a Federal judge was involved that it was viable. I thought it would just disappear. It didn't. Then, after I had my problem, it was now to my benefit to keep it alive if it was going to die, and I don't believe that it ever would have died.

Mr. **Baron**. Mr. Chairman, I'd like to introduce into evidence Exhibit 16, which is the dockets sheet in the case of *United States* v. *Dredge* in the U.S. District Court for the District of Maryland.

The **Chairman**. Is there objection to that exhibit?

Mr. **Anderson**. No.

The **Chairman**. It will be admitted.

[The document referred to was marked House Exhibit No. 16 and was received in evidence.]

Mr. **Baron**. Mr. Dredge, I have just handed you Exhibit 16. The name "Dwight Pettit" appears on the front page in the middle, sort of on the right-hand side. Do you see that?

Mr. **Dredge**. Yes.

Mr. **Baron**. Who was Mr. Pettit?

Mr. **Dredge**. He was an attorney in Baltimore, Maryland.

Mr. **Baron**. And what was his role in the case?

Mr. **Dredge**. Bill Borders contacted Pettit to appear for me at Judge Kaufman's court in Baltimore.

Mr. **Baron**. OK. So you got to Mr. Pettit through Mr. Borders?

Mr. **Dredge**. Yes.

Mr. **Baron**. All right. Finally, Mr. Dredge, as you testify here today, does any agency of the Government or the House of Representatives or in any way have any hold on you, such as probation or anything of that type?

Mr. **Dredge**. No.

Mr. **Baron**. I have no further questions.

The **Chairman**. That completes your direct examination?

Mr. **Baron**. Yes, it does, sir.

The **Chairman**. We'll take a 10-minute recess and then begin with cross-examination at 10:30.

[Brief recess.]

The **Chairman**. The committee will reconvene.

At this time, we will recognize Mr. Anderson to proceed with cross-examination of the witness.

Mr. **Anderson**. If we might pause just a moment, I have sent someone to get Judge Hastings and bring him back in. I think he should see this, also.

[Pause.]

Mr. **Anderson**. Mr. Chairman, Judge Hastings has said we should proceed in his absence and he'll join us in a moment.

The **Chairman**. Go right ahead.

CROSS-EXAMINATION

Mr. **Anderson**. Mr. Dredge, before I review your recollection with you, there are a couple points I'd like to clarify right off about what you have said today.

You talked about an elaborate pay phone scenario that you and Mr. Borders had set up to communicate with each other; was I correct in hearing that, sir?

Mr. DREDGE. Yes, sir.

Mr. ANDERSON. And you told us where the locations of the pay phone banks were down in Miami. I didn't recall your telling us where the pay phone banks were that you used to call Mr. Borders.

Mr. DREDGE. I don't have any idea.

Mr. ANDERSON. Did he give you a list of numbers or what?

Mr. DREDGE. One, two, three, and that was to indicate to him what phones to go to.

Mr. ANDERSON. Now, when you made these pay phone calls, I take it that either you would call Mr. Borders or he'd call you, and then you'd simply go out to the pay phone and follow the instructions; is that correct?

Mr. DREDGE. Correct.

Mr. ANDERSON. And to what numbers did you charge the pay phone calls that you made to Mr. Borders?

Mr. DREDGE. I didn't. I used money.

Mr. ANDERSON. I see. And so you engaged in long-distance telephone conversation with change in your pocket in quarters; is that correct, sir?

Mr. DREDGE. Yes.

Mr. ANDERSON. Now, Mr. Dredge, you took an oath to tell the truth today, is that correct, the whole truth and nothing but the truth?

Mr. DREDGE. Yes.

Mr. ANDERSON. And you swore to tell the truth, the whole truth and nothing but the truth on June 21, 1989, when you appeared for a deposition before Senator Specter, did you not, sir?

Mr. DREDGE. Yes.

Mr. ANDERSON. And you swore to tell the truth, the whole truth and nothing but the truth when you appeared before an Investigating Committee of five judges four years ago on May 22 and 23, 1985, didn't you, sir?

Mr. DREDGE. Yes.

Mr. ANDERSON. Now, do you recall that at the outset of your testimony before the Investigating Committee, Mr. Doar asked you whether you had a business relationship with Mr. Borders before April 1981; do you recall that question, sir?

Mr. DREDGE. No, I really don't recall it.

Mr. ANDERSON. Mr. Chairman——

Mr. DREDGE. I'm not denying that he asked; I just don't recall it.

Mr. ANDERSON. I understand that, sir, but I think we want to be very careful today.

Mr. Chairman, might I simply place two volumes of the transcript from that before the witness so he can refresh his recollection, and I may refer him to portions of that testimony without wandering back and forth?

The CHAIRMAN. You may do that.

Mr. ANDERSON. And in anticipation of these, I have marked them as Respondent's exhibits, but let me simply, so the committee will know what we are referring to.

Mr. Dredge, I show you what has been marked a copy of Respondent's Exhibit Number 2, and I would ask you if you could identify that for the committee.

Mr. **Dredge**. It says "Respondent's Exhibit Number 2".

Mr. **Anderson**. Yes, but inside, what is it; can you tell us?

Mr. **Dredge**. "In the United States Court of Appeals for the Eleventh Circuit, in the Matter of Complaint Filed against United States District Judge Alcee L. Hastings, Volume 3."

Mr. **Anderson**. I would ask if you would turn to in that volume——

Mr. **Dredge**. Mr. Chairman, could I make a statement before he starts?

The **Chairman**. You can go right ahead and make a statement if you would like to make a statement to the committee.

Mr. **Dredge**. The statement is to the committee, I would like to point out that when I went to this hearing in Atlanta and was there, some four, four-and-a-half years had passed since this thing happened. I went there without benefit of talking to anyone, looking at any documents, looking at any airline tickets, looking at any phone traffic—without benefit of anything. I refused to talk to John Doar, I refused to talk to anyone that had anything to do with anything because I didn't want to be in a position where Mr. Anderson or anyone else, for that matter, could say that I had been prompted or led or was the Government's witness and was doing something for the Government. I wanted to be independent.

As a result of that, everything that I testified to, hopefully, I testified to truthfully, not intending to lie or mislead or do anything wrong. And I was winging it. So a lot of things that I said—and I think that you will find in these volumes, I said then that I was not sure of the dates, I had no reason to put them together. I was telescoping everything that I could recall or retain from four years ago, four-and-a-half years ago, whatever the time frame may have been.

So while they may not be consistent with things that I have said today or entirely consistent with the things that I said with Mr. Specter because I have now had benefit of looking at records. I have had benefit of looking at airline tickets; I have had benefit of looking at materials that aided me—not only that, I have the benefit of the time frame from Atlanta to now, knowing that there are things that I should recall and things that I should—I would like you to put yourself, if it is humanly possible, in my position. When I appeared in Atlanta, I went there unwillingly, but I went. And everything that happened once my case was over with, I attempted to put all of these things out of my mind because I only had one thought in my mind from that point forward, and that was my safety and my wife's safety. I had no other driving force. I was only concerned about the safety of the two of us.

So things that had transpired in the way with Borders or anything, I attempted to put out of my mind. I didn't rehash it, I didn't go over it—I didn't even want to dwell on it. And my wife knew absolutely nothing about anything, so there was at no time any conversation could come up. I wasn't in touch with anybody; I didn't want to be in touch with anybody.

So if there are any inconsistencies in what transpired in Atlanta and with Mr. Specter and today, it isn't because I was looking to lie. It was because I didn't recall, and I had no reason to recall, and would not let Mr. Doar or anyone else help me with any information. I wouldn't look at anything. So I want to lay that groundwork first.

Mr. ANDERSON. Are you through, sir?

Mr. DREDGE. Yes, sir.

Mr. ANDERSON. Mr. Chairman, may I get some ground rules for this cross-examination? First I would ask that that last time be excluded and not charged to me. It certainly was not done in any response to a question I asked.

The CHAIRMAN. It will not be charged to either side.

Mr. ANDERSON. Secondly, you will recall I occasionally objected to questions on foundation grounds when Mr. Baron propounded them, and you said I could do that on cross. I ask now that the witness be instructed to respond to my inquiries as I propound them, and that Mr. Baron be permitted to bring out such additional information on redirect as may bear upon this witness' credibility.

But it is going to be a long, difficult cross-examination and day here. It will not be shortened, and I will not be able to develop the evidence as I wish if we are interrupted with occasional filibusters.

I would ask that you permit and that you control this witness and instruct him to answer my questions, leaving it to the House managers to bring out such explanations as they deem significant to their case.

It perhaps should be but it is not this man who is the respondent in this case; it is that man. We are here to get his evidence as it bears on that question, not his evidence as it bears on his views.

The CHAIRMAN. The witness is directed to be responsive to the extent that he can to all the questions, both on cross-examination and redirect if there is redirect examination.

Mr. DREDGE. That is my intention.

The CHAIRMAN. Counsel can proceed.

Mr. ANDERSON. Mr. Dredge, I would direct your attention to page 44 of what has been marked Respondent's Exhibit Number 2.

Mr. BARON. Pardon me, Mr. Anderson. Do you have a copy of that for us? I have never seen what you have presented to the witness. I'm not sure exactly what he is looking at.

Mr. ANDERSON. My apologies. Excuse me, Your Honor. I do apologize. [Showing document to Mr. Baron.]

[Pause.]

Mr. ANDERSON. Mr. Dredge, are you examining page 44?

Mr. DREDGE. Page 44, yes, sir.

Mr. ANDERSON. And that's where you took the oath, isn't it, sir?

Mr. DREDGE. Yes, sir.

Mr. ANDERSON. And before Mr. Doar showed you any records or made any attempt to refresh your recollection, he asked you when you first met Mr. Borders, didn't he?

Mr. DREDGE. Yes.

Mr. ANDERSON. And you forthrightly stated you could not recall the time frame, didn't you?

Mr. DREDGE. We're on page 45 now?

Mr. ANDERSON. Yes, sir.

Mr. **Dredge.** "How long had you known him at that time?"

"I honestly don't know, but not overly long."

Mr. **Anderson.** And then you went on to say, did you not, sir, that, "My first acquaintance with him was because he was an attorney. I went to see him about a problem I had, and he was a counselor of mine, and shortly thereafter withdrew from being my counsel, because I couldn't—it really wasn't his sphere or his area. My problem was in Maryland; he was in Washington."

That is what you said was your first relationship with Mr. Borders, wasn't it, sir?

Mr. **Dredge.** Yes, sir.

Mr. **Anderson.** Now, are you telling the committee today that even then you did not recall that you had had some prior dealings with Mr. Borders?

Mr. **Dredge.** Yes, sir, I am. You are right. That is right.

Mr. **Anderson.** And that you simply didn't have that recollection on that day.

Mr. **Dredge.** That's right.

Mr. **Anderson.** And do you recall that Mr. Doar asked you whether you had met Mr. Borders before the indictment was handed down against you—that also is on page 46.

Mr. **Dredge.** OK.

Mr. **Anderson.** And do you recall your response—"No, I wasn't there before the indictment was handed down. No, I'm sure I wasn't—I'm reasonably sure I wasn't. I don't recall the time frame, whether it was before I was indicted. I doubt—I believe I received the indictment shortly thereafter when I went to Washington, DC."

Do you recall giving that response at that date, sir?

Mr. **Dredge.** Yes.

Mr. **Anderson.** And do you recall that Mr. Doar asked you the date on which you approached the authorities?

Mr. **Dredge.** Is that on this page?

Mr. **Anderson.** No, sir, it is not; page 62.

Mr. **Dredge.** [Pause.] OK.

Mr. **Anderson.** And do you recall he asked you when you approached the authorities?

Mr. **Dredge.** I said I did not remember the date.

Mr. **Anderson.** But didn't you also say, sir, that it was after Borders told you Judge Hastings had granted a *sua sponte* continuance you went to the authorities, that "he convinced me it was not a pipe dream, that it was in fact a fact. I did go to the State Attorney's Office." Do you recall saying that, sir?

Mr. **Dredge.** It is here. I must have said it.

Mr. **Anderson.** So you went to the authorities after you became convinced, Mr. Dredge, that Mr. Borders was not, in your words, "smoking Ajax", having pipe dreams, blowing smoke; is that correct, sir?

Mr. **Dredge.** Yes.

Mr. **Anderson.** And Mr. Dredge, your recollection today—how long after you became convinced of that fact was it before you approached the Federal authorities?

Mr. **Dredge.** Well, I was arrested on May 10th, and I went to the authorities July 20, so it must have been some 50 days later.

Mr. ANDERSON. So for some 50 days, you sat on this information, is that correct, sir?

Mr. DREDGE. Yes.

Mr. ANDERSON. And you were aware, certainly on Sunday, May 10th, that you had a problem either in Baltimore or Miami, weren't you?

Mr. DREDGE. Yes.

Mr. ANDERSON. And that problem, you were aware, wasn't going to go away, weren't you?

Mr. DREDGE. Yes.

Mr. ANDERSON. That was a fairly major drug conspiracy indictment that was handed down against you, wasn't it, sir?

Mr. DREDGE. No, sir.

Mr. ANDERSON. It was not?

Mr. DREDGE. You said a "fairly major" drug thing. I don't believe that it was anything major, but if you want to say it was major, that's OK with me, too.

Mr. ANDERSON. No, I certainly don't want—you didn't think it was major.

Mr. DREDGE. It was major for me. It was not a major drug deal. It certainly was major for me.

Mr. ANDERSON. And it could have involved you going into the Federal penitentiary for a considerable length of time, couldn't it?

Mr. DREDGE. Most assuredly.

Mr. ANDERSON. Mr. Dredge, you have testified this morning that you have had the advantage of reviewing some records to refresh your recollection.

Mr. DREDGE. Yes, sir.

Mr. ANDERSON. Now, you first appeared before the Investigating Committee on May 22nd, isn't that correct, sir—1985, four years ago.

Mr. DREDGE. If you say so, yes, OK.

Mr. ANDERSON. Well, could you again consult the transcript and the date? Do you have any reason to question the accuracy of this transcript?

Mr. DREDGE. No, I don't.

Mr. ANDERSON. And you testified that over the lunch break of the first day; you had lunch with Agent Murphy and, I think, Jimmy Harmon, and they made an effort to refresh your recollection then. Do you recall that, sir?

Mr. DREDGE. I recall having lunch with Murphy and Harmon; yes, sir.

Mr. ANDERSON. And do you recall after you had lunch coming back to the committee and saying that they tried to refresh your recollection then; do you recall that?

Mr. DREDGE. I recall coming back to the committee and telling them that I had lunch with Murphy and Harmon, yes.

Mr. ANDERSON. Would you direct your attention to pages 102 and 103, the bottom of 102, the top of 103?

Mr. DREDGE. OK.

Mr. ANDERSON. And you did say there that you had asked Agent Murphy about some points just to refresh your memory, didn't you?

Mr. DREDGE. Yes.

Mr. **Anderson**. And during the afternoon session, Mr. Doar showed you the telephone logs they had obtained from Mr. Borders' office, did he not?

Mr. **Dredge**. Quite possibly.

Mr. **Anderson**. I would direct your attention to page 104.

Mr. **Dredge**. OK.

Mr. **Anderson**. Do you see that Mr. Doar was showing you some records there?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And your response was that they didn't refresh your recollection, wasn't it?

Mr. **Dredge**. The 15th of May, that's right.

Mr. **Anderson**. That the records he was showing couldn't refresh you.

Mr. **Dredge**. That's right.

Mr. **Anderson**. And do you recall that he had these volumes of message logs from Mr. Borders' office?

Mr. **Dredge**. Yes.

Mr. **Anderson**. You do recall he had those. And he didn't just show you one; he went through slip after slip trying to refresh your recollection as to dates, times, conversations, did he not?

Mr. **Dredge**. He may well have.

Mr. **Anderson**. Well, would you look at pages—through——

Mr. **Dredge**. I will concede that.

Mr. **Anderson**. Thank you, sir.

Now, Mr. Doar disclosed to you that he, too, had obtained your telephone bills, had he not?

Mr. **Dredge**. Probably.

Mr. **Anderson**. And he disclosed to you that he, too, had obtained your travel records, did he not?

Mr. **Dredge**. Probably.

Mr. **Anderson**. And this was four years ago, in 1985, was it not?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And he showed you composites which were his analyses of your travel and telephone records, did he not?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And Mr. Doar was fair to you, wasn't he, during these proceedings?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And he gave you an opportunity to examine the records he was showing you, didn't he?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And those records didn't refresh your recollection, did they?

Mr. **Dredge**. No, because I didn't have time to think about them. If he'd wanted to give me a week or ten days, I could have thought about them.

Mr. **Anderson**. It would take a week or ten days to refresh your recollection. Did you tell Mr. Doar that?

Mr. **Dredge**. No.

Mr. **Anderson**. Now, Mr. Doar gave you some memoranda that had been written by a woman named Martha Rogers; do you recall that?

Mr. **Dredge**. Yes.

Mr. **Anderson**. A memorandum by John Owens; do you recall that?

Mr. **Dredge**. Yes.

Mr. **Anderson**. Having those names before you, do you know who those people were?

Mr. **Dredge**. No.

Mr. **Anderson**. Do you recall what your response was to those memoranda?

Mr. **Dredge**. No.

Mr. **Anderson**. Do you recall that your response was that anything those people said was probably inaccurate?

Mr. **Dredge**. Do you want to tell me what page we're on?

Mr. **Anderson**. Pages 132 and 133, sir.

[Pause.]

Mr. **Anderson**. I think I have the wrong page number.

Mr. **Baron**. I was going to say, I don't see that on those pages.

Mr. **Anderson**. Yes. I will ask Ms. Hochberg to find that page and we'll return to that question.

But in any event, you do recall that he showed you memoranda by Ms. Rogers; you do recall that he showed you statements and telex which he later told you Agent Murphy had written?

Mr. **Dredge**. [Nodding head.] OK.

Mr. **Anderson**. The reporters cannot catch your head nods.

Mr. **Dredge**. OK.

Mr. **Anderson**. Now, in point of fact, the Investigating Committee gave you a night to reflect on these matters, didn't they?

Mr. **Dredge**. I don't recall that I had a night to reflect on them. I don't know that I reflected on anything.

Mr. **Anderson**. But you do recall that your testimony began on May 22nd, don't you?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And you do recall that on May 23rd, the following morning, you came back?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And you do recall that on the morning of the 23rd, you didn't start right away because Agent Murphy testified first, don't you?

Mr. **Dredge**. I don't recall that, but I'll take your word for it.

Mr. **Anderson**. So you did have a night to reflect upon ways in which your recollection might be refreshed or improved.

Mr. **Dredge**. Had I thought about it.

Mr. **Anderson**. Had you thought about it.

Mr. **Dredge**. No, I didn't.

Mr. **Anderson**. No, you didn't. But you had taken an oath that you would not only tell the truth, but the whole truth, on that occasion, didn't you?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And on that occasion, although it was four years after the event, it was four years, five years, before today's proceedings, wasn't it?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And am I fair in assuming that ordinarily, your recollection does not improve with age?

Mr. DREDGE. I don't know. You can assume anything you like. I can only tell you that after once going there to Atlanta, I have had ample time to reflect on things.

Mr. ANDERSON. Well, now, let's go to the ample time. I think you testified before Senator Specter that during that ample time, you had refused to talk about this.

Mr. DREDGE. Exactly.

Mr. ANDERSON. You had met with Mr. Baron twice, but you had refused both times not only to talk about it but even to examine documents.

Mr. DREDGE. Right.

Mr. ANDERSON. And I think you indicated you hadn't even spoken with Agent Murphy between the date you were in Atlanta and June 19th when you came into Washington; is that correct?

Mr. DREDGE. Correct.

Mr. ANDERSON. And I think you indicated that on June 19th, Mr. Baron or someone gave you one document and one document only, and it was that transcript; am I not correct, sir?

Mr. DREDGE. Yes.

Mr. ANDERSON. And at that time, sir, you said that your recollection between—what time of day did you meet with Mr. Baron on June 19th, sir?

Mr. DREDGE. I don't know.

Mr. ANDERSON. Was it the morning?

Mr. DREDGE. I don't recall.

Mr. ANDERSON. Sir, we're talking about the week before last, and you don't recall?

Mr. DREDGE. Oh, week before last. I thought you was talking about in Baltimore.

Mr. ANDERSON. No, I'm talking about June 19, 1989.

Mr. DREDGE. I met with him at, I think, 9:00 in the morning.

Mr. ANDERSON. Nine o'clock in the morning. Was it at that time you got those transcripts?

Mr. DREDGE. No. I got the transcripts from my attorney.

Mr. ANDERSON. Well, what time did you get the transcripts from your attorney?

Mr. DREDGE. Whenever I was at his office. I don't know—in the morning.

Mr. ANDERSON. Was it on the same day?

Mr. DREDGE. In the morning, yes.

Mr. ANDERSON. On June 19th?

Mr. DREDGE. No. I believe I got the transcripts the day before I met Mr. Baron.

Mr. ANDERSON. That would have been Sunday, June 18th.

Mr. DREDGE. One moment, please. [Conferring with counsel.]

Mr. ANDERSON. Mr. Chairman, I would ask that the witness—I understand what was done in deposition, but I would ask that the witness not consult except on legal problems with his lawyer. On factual issues, I think it is appropriate that the witness, that we test his recollection today, and that's what I am about.

The CHAIRMAN. The witness will confine his answers to his own recollection on these facts, and to the extent he does not know, just indicate that.

Mr. DREDGE. OK.

Mr. **Anderson**. Now, you appeared before Senator Specter at approximately 8:30 in the morning, I think it was, on June 21st, didn't you?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And do I recall your testimony that the only document you had had an opportunity to read between that time and the time you appeared were those transcripts?

Mr. **Dredge**. No, that's not true.

Mr. **Anderson**. It was not your testimony on June 21st that the only document you had had a chance to read was your transcript?

Mr. **Dredge**. I think that I indicated there were two volumes that my attorney had and that I had read a passage, or two pages in one book, that he wanted me to read. But if that was the same day or the day—I believe it was the day that I went there.

Mr. **Anderson**. Well, now, I confess error. You did testify that you had read a page-and-a-half of three volumes at your deposition.

Mr. **Dredge**. No, two volumes.

Mr. **Anderson**. Two volumes?

Mr. **Dredge**. Yes.

Mr. **Anderson**. Your recollection today is you said two volumes?

Mr. **Dredge**. It was three volumes there. I don't believe that I read all three volumes or anything out of three volumes. It was something that my attorney wanted me to read in two books, I believe.

Mr. **Anderson**. And in the aggregate, about a page-and-a-half was your testimony, as I recall?

Mr. **Dredge**. In one book it was a page-and-a-half; another book may have been a half a page or something.

Mr. **Anderson**. So a page-and-a-half to two pages in two books.

Mr. **Dredge**. Whatever.

Mr. **Anderson**. And would you recall today those three volumes if I showed you copies?

Mr. **Dredge**. I'm reasonably sure I would.

Mr. **Anderson**. May I approach the witness, Mr. Chairman?

The **Chairman**. You may.

Mr. **Anderson**. Mr. Chairman, I haven't marked these because I think they have been in circulation in the Senate, but I am showing the witness a three-volume set of what is Appendix 2 to the House committee hearings, entitled, "A Statement of Information".

Mr. Dredge, are those the three base volumes you saw?

Mr. **Dredge**. Quite possibly.

Mr. **Anderson**. Well, is there any way you could examine them, perhaps find the page-and-a-half or something you looked at?

Mr. **Dredge**. No. I don't know what pages it was.

Mr. **Anderson**. They are the same color as the books you saw?

Mr. **Dredge**. Same color.

Mr. **Anderson**. Seem to be about the same thickness?

Mr. **Dredge**. I believe they are the same books.

Mr. **Anderson**. But between the time you saw those—now, was that on Sunday or Monday?

Mr. **Dredge**. Monday.

Mr. **Anderson**. That was on Monday. So on Monday you read a page-and-a-half to two pages out of those books; am I correct?

Mr. **Dredge**. Yes.

Mr. ANDERSON. And you had the transcript of the testimony you gave before the Investigating Committee; am I correct about that?

Mr. DREDGE. I took the transcript home with me.

Mr. ANDERSON. You took the transcript home with you. That is the document you really reviewed, isn't it, sir?

Mr. DREDGE. I read the whole document.

Mr. ANDERSON. You read the whole thing.

Mr. DREDGE. Yes—when I saw the whole thing, I read from page 40-something; I didn't have the first part, whatever it was.

Mr. ANDERSON. Well, you read from page 44 or page 45 to the part that we started today on?

Mr. DREDGE. Whatever it was, yes, right.

Mr. ANDERSON. But apart from reading that document right there, and perhaps as many as two pages in that thing, that is the sole source from which you refreshed your recollection; am I correct there, sir?

Mr. DREDGE. I believe.

Mr. ANDERSON. You did not have any telephone logs to look at?

Mr. DREDGE. No, I don't think so.

Mr. ANDERSON. You didn't have any long-distance records, telephone billing records, to look at, did you?

Mr. DREDGE. No.

Mr. ANDERSON. You did not have your Delta airline ticket to look at, did you?

Mr. DREDGE. No.

Mr. ANDERSON. So just that testimony, and that accounts for your recollection on June 21, 1989; is that correct, sir?

Mr. DREDGE. Yes.

Mr. ANDERSON. And whatever improvement took place in your recollection between May of 1985 and June 21st was the product of your review of that transcript between whenever you got it on Sunday and Wednesday morning; is that correct, sir?

Mr. DREDGE. Yes.

Mr. ANDERSON. Now, I thought I heard you say before that Mr. Doar would have had to give you four or five days with the documents he had shown you to enable you to refresh your recollection.

Mr. DREDGE. Well, your memory is pretty short, too. I said about ten days.

Mr. ANDERSON. Well, all right. I stand corrected again, sir, and I appreciate the correction.

Mr. DREDGE. But I would have needed some time.

Mr. ANDERSON. But with no documents, almost nine years after the fact, you only needed two days with the set of transcripts in which the primary thrust of your testimony is you didn't have any recollection; is that correct, sir?

Mr. DREDGE. I think you are attempting to confuse me, but if you will try again, and let's make sure that I'm on the same wavelength you are.

Mr. ANDERSON. All right. Yes, let's try and get this one down.

If I understood you—and please do correct me if I didn't—you said that back in May 1985, you would have needed about ten days with the documents Mr. Doar was showing you in order to refresh your recollection of events that occurred in 1981. Did I get that right?

Mr. **Dredge**. Go ahead.

Mr. **Anderson**. I can't do it unless you say "Yes".

Senator **Rudman**. Mr. Chairman, could I just ask——

The **Chairman**. Senator Rudman.

Senator **Rudman** [continuing]. The counsel to stay at the microphone, not for me, but if our colleagues are going to watch this examination, they are not going to hear your conversation if you are standing where you are standing.

Mr. **Anderson**. I appreciate that, and I may stray again because sometimes those are habits.

Did you answer that question?

Mr. **Dredge**. If I had had ten days with all of the things that I have had subsequently and have thought about it and went over it in my mind and everything, the answer is yes, I could have remembered better.

Mr. **Anderson**. Yes, but your testimony was it would have taken you that long, wasn't it, sir?

Mr. **Dredge**. It has taken me longer than that, actually, a lot longer.

Mr. **Anderson**. Well, but your testimony was that back then, even back then it would have taken you ten days.

Mr. **Dredge**. That was earlier on this morning, and ten days was just a cryptic number; it had absolutely really no bearing on anything. You can pick it out and think that that's what a person needs. It really wasn't. I just happened to say ten days. I could have said six months just as easy.

Mr. **Anderson**. Sir, all I want is for you to tell me and tell this committee your view of the situation. I realize you could pluck anything out of the air, and I suspect you may have, but that's not what we're here for. I just want to get what your view today is.

In any event, you had between whenever on June 18th to the morning of June 19th, something less than two days to refresh your recollection for the deposition that was taken before Senator Specter; is that correct, sir?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And the only documents you reviewed were two pages out of those three volumes and that testimony; is that your testimony, sir?

Mr. **Dredge**. I believe it is, yes.

Mr. **Anderson**. Now, you are quite correct, you have had more than ten days since that time. Have you reviewed some additional documents in the interim?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And what documents were those, sir?

Mr. **Dredge**. Airline tickets, telephone logs—that would be it.

Mr. **Anderson**. And without asking you what you said to your attorney or what he said to you, in whose presence did you conduct those reviews?

Mr. **Dredge**. Alan Baron's.

Mr. **Anderson**. Mr. Baron was present for those reviews?

Mr. **Dredge**. Yes, yes.

Mr. **Anderson**. And did he show you the documents?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And did he tell you—indicate to you—ask you then whether they refreshed your recollection?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And when Mr. Baron did that, did you find it easier to refresh your recollection than you had when Mr. Doar did it to you?

Mr. **Dredge**. Well, you say when Mr. Doar did it to me—we was in the courtroom in Atlanta, and he just put them up there for me to look at. It wasn't any time frame or anything, and he was asking questions, and I was winging it.

With Mr. Baron, he laid the documents out I was able to sit there and sift through them and collect myself, and this was for many hours.

Mr. **Anderson**. About how many hours?

Mr. **Dredge**. I would tell you probably 15, 18 hours.

Mr. **Anderson**. And over how many days was that?

Mr. **Dredge**. Three.

Mr. **Anderson**. Over a three-day period, you spent 15 to 18 hours going over documents that Mr. Baron gave you to refresh your recollection; is that correct, sir?

Mr. **Dredge**. Absolutely.

Mr. **Anderson**. Now, Mr. Doar did at least lay out some specific documents before you and try to give you a chance, didn't he, sir?

Mr. **Dredge**. Nothing of any importance or any time frame—and quite frankly, I really didn't even look at them that hard or that well or try to put them in perspective—but yes, he did put documents up from time to time.

Mr. **Anderson**. I was thinking specifically he showed you some telexes and interview memorandums that Agent Murphy had done, didn't he?

Mr. **Dredge**. Yes.

Mr. **Anderson**. Now, he gave you at least enough time to read the documents, didn't he?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And indeed he pointed you toward them on the 22nd, and you said you couldn't tell who the author of some of the telexes were, so you didn't want to read them then; is that correct, sir? Do you recall that?

Mr. **Dredge**. I don't follow—are you talking about in Atlanta——

Mr. **Anderson**. Yes, sir.

Mr. **Dredge** [continuing]. Because that's the only place he ever showed me any documents.

Mr. **Anderson**. Yes, yes. I'm talking about Atlanta.

Mr. **Dredge**. We're still in Atlanta.

Mr. **Anderson**. Yes, we're still in Atlanta.

Mr. **Dredge**. If you stray, let me know.

Mr. **Anderson**. I will.

Mr. **Dredge**. When we was in Atlanta, he showed me various documents—or 302s, I think they are called--do I recall the 302s. I said then and I will say now that if Bill Murphy had a 302—I think it's a 302—if he had a 302 in there and that I said something. While I didn't remember it, I believe it to be true; if Murphy put it there, it was true.

Mr. **Anderson**. So it was your view then and I take it it is your view today that if Murphy said it, it is true?

Mr. **Dredge**. If Murphy said that I said it, and it is in the document, he did not lie about it; it is what I told him.

Mr. **Anderson**. But when you were confronted in 1985, four years after the fact, with those memoranda written by Agent Murphy and asked the question, did you tell Mr. Murphy that, sir? Do you recall giving the response,—"I don't know that I did, but if. I don't know; I don't remember telling him. That isn't to say that I didn't tell him; I don't remember the telling. If I said I received a phone call from Borders, my agreement was to tell the Government whatever transpired. Just because I don't remember, I'm not saying it didn't happen. If Murphy says that it happened, and I told them that, then it did happen, but I don't remember it to this day, from my own memory."

Mr. **Baron**. Could we have a page reference, please?

Mr. **Anderson**. Sure, pages 33 and 34 of Volume 4, the May 23rd proceedings.

The **Chairman**. Could counsel restate the question at this point?

Mr. **Anderson**. Yes, sir.

Mr. Dredge—and I will try and be very careful—do you recall that, on May 23, 1985, do you recall, as of July 11, 1989, that on May 23, 1985, you were asked the question, "Did you tell Mr. Murphy that on August 18th?" do you recall being asked that question?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And do you recall today that your response was, "I don't know that I did, I don't know, I don't remember telling him. That isn't to say that I didn't tell him, I don't remember the telling. If I said I had received a telephone call from Borders, my agreement was to tell the Government whatever transpired, and just because I don't remember it, I'm not saying it didn't happen. If Murphy says it happened and that I told him, then it did happen, but I do remember to this day in time from my own memory." Do you recall today saying that?

Mr. **Dredge**. Where are you reading all this at?

Mr. **Anderson**. Pages 33 and 34 of what has been marked as Respondent's Exhibit No. 3, and I am reading from lines 16 through 25 on page 33, and line 1 on page 34. And take your time, I don't want to rush you on refreshing your recollection.

Mr. **Spaeder**. This is Volume 4, counsel?

Mr. **Anderson**. Yes.

Mr. **Dredge**. OK.

Mr. **Anderson**. Now, do you recall having given that testimony before the Investigating Committee five years ago?

Mr. **Dredge**. Yes. Do I recall making the statement?

Mr. **Anderson**. Yes.

Mr. **Dredge**. Yes.

Mr. **Anderson**. Do you recall it because you now remember it, your recollection having been refreshed, or because you've read it in that document?

Mr. **Dredge**. I recall that I made the statement then.

Mr. **Anderson**. And do you also recall, Mr. Dredge, that, in point of fact, it was your position on May 22nd and 23rd, essentially, that you could not then recall most of the events that occurred in 1981?

Mr. DREDGE. True.

Mr. ANDERSON. And you persisted in that position, even after Mr. Doar showed you these documents and made the best of his efforts to enable you to refresh your recollection then?

Mr. DREDGE. True.

Mr. ANDERSON. And the oath you took at that time was not merely to tell the truth, but it was to tell the whole truth, to the best of your ability, was it not, sir?

Mr. DREDGE. Yes.

Mr. ANDERSON. Now, would it also be true, if I were to say that your recollection had vastly improved by July 21, 1989, when you appeared before Senator Specter?

Mr. DREDGE. Yes.

Mr. ANDERSON. Again, you were under the oath at that time to tell not just the truth, but the whole truth?

Mr. DREDGE. Yes.

Mr. ANDERSON. And just to recap, to be sure that I've got this right, the sole source from which you had refreshed your recollection was the transcript of that testimony before the Investigating Committee, and maybe as many as two pages out of the three beige books, is that correct?

Mr. DREDGE. Yes.

Mr. ANDERSON. Those are the only documents that you examined for that one?

Mr. DREDGE. Yes.

Mr. ANDERSON. Now, by June 21, you not only had a recollection of a fairly firm chronology of when, where and how you met Mr. Borders, but you also remember where you could remember conversations and the time they took place with Mr. Borders that didn't even relate to the Romanos. Do you recall that?

Mr. DREDGE. Yes.

Mr. ANDERSON. In fact, you could remember riding around in a car with him on a specific date, discussing D.C. lotteries. Do you recall that, sir?

Mr. DREDGE. Discussing what?

Mr. ANDERSON. The D.C. lotteries.

Mr. DREDGE. Yes.

Mr. ANDERSON. You could then, on June 21, 1989, remember a specific conversation that occurred in a car back in 1981, concerning D.C. lotteries, is that correct, sir?

Mr. DREDGE. Yes.

Mr. ANDERSON. But at one point, while I was still present, you got a bit ahead of your story, didn't you? Do you recall that, sir?

Mr. DREDGE. Tell me what you're talking about.

Mr. ANDERSON. Well, we got up to the events of May 10th and 11th. Do you recall that we were doing that?

Mr. DREDGE. Yes. Yes.

Mr. ANDERSON. And do you recall that at some point Mr. Spaeder broke in and told you that you had omitted some events? Do you recall that, sir?

Mr. BARON. Counsel, could we have a page reference?

Mr. ANDERSON. Deposition pages 58, 57 and 58.

Mr. **Dredge**. Do I have that?

Mr. **Anderson**. No, you don't, sir. You're telling me that you do not recall that, as we stand here today, is that correct, sir?

Mr. **Spaeder**. He's asking for a copy.

Mr. **Dredge**. I'm asking for a copy.

Mr. **Anderson**. And I am asking to find what this witness recalls out of his own mind, as opposed to our documents of an event that transpired on June 21, 1989. If he tells me he does not today recall what happened eight days ago, I will be more than happy to show him the document.

Do you recall today whether you said that, sir?

Mr. **Dredge**. What I recall mostly was your dramatics, as you're doing now. I can only——

Mr. **Anderson**. Videotape that one.

Mr. **Dredge**. I can also tell you that I remember what you're speaking about, yes.

Mr. **Anderson**. Would you like to refresh your recollection?

Mr. **Dredge**. I just want to know where you are. I would like to keep in the same ball game.

Mr. **Anderson**. So would I.

Let me, if I might, I might show the respondent—I believe it is already a part of the committee's record, but I have marked it Respondent's Exhibit 4, it is a deposition of William Dredge, taken on June 21, 1989.

May I show that to the witness, sir?

The **Chairman**. You may.

Dr. **Dredge**. Do you want to tell me where we are?

Mr. **Anderson**. Sure, pages 57 and 58. At the top of page 57, lines 5 and 6, do you recall that you said, "My attorney advised me that I didn't complete the thing I learned before being arrested." Do you recall saying that, sir?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And then you went back, Mr. Spaeder explained that he wanted to be sure you had the facts correct, and you went on to recount the chronology as you recalled it on June 21, 1989.

Now, when you met with Mr. Baron, on June 19th, Monday, that was in Mr. Spaeder's office, was it not?

Mr. **Dredge**. Yes.

Mr. **Anderson**. They've got to hear it.

Mr. **Dredge**. Yes.

Mr. **Anderson**. And Mr. Baron left those three days' volumes or copies of them in the office when he departed, didn't he, if you recall?

Mr. **Dredge**. Mr. Spaeder had the documents. Where he got the documents from, I don't know.

Mr. **Anderson**. But you did see them in Mr. Spaeder's office?

Mr. **Dredge**. I got them from Mr. Spaeder, yes.

Mr. **Anderson**. Well, you didn't get them on June 19th, but you saw them in his office; am I correct on that?

Mr. **Dredge**. The first day that I saw them is the day that I got them.

Mr. **Anderson**. Well, what day was that?

Mr. **Dredge**. It was the 19th or the 18th, whatever that Monday was.

Mr. **Anderson**. Well, what documents did you get that day?

Mr. **Dredge**. I got these documents from——

Mr. **Anderson**. That's all you got?

Mr. **Dredge**. Yes, sir.

Mr. **Anderson**. You saw those beige documents, too, didn't you?

Mr. **Dredge**. The three books, three volumes.

Mr. **Anderson**. And those were in Mr. Spaeder's office?

Mr. **Dredge**. Yes.

Mr. **Anderson**. Did you see any other documents in Mr. Spaeder's office?

Mr. **Dredge**. Yes, I did, a couple of other pages from something, I don't know what they were from, from——

Mr. **Anderson**. Were they identified as being relevant——

Mr. **Dredge**. Documents, yes.

Mr. **Anderson** [continuing]. Documents relevant to these proceedings?

Mr. **Dredge**. Yes.

Mr. **Anderson**. Well, Mr. Dredge, let's shift to some of the things that have been consistent over time for a period. Now, you have consistently recalled, have you not, that Mr. Borders claimed he had the power to fix judges other than Judge Hastings, didn't you?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And you specifically mentioned a judge in New Orleans and another one in DC, did you not?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And you told Agent Murphy about those way back in 1981, did you not?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And you repeated that when you—that is one of the things you did recall and repeated when you testified before the Investigating Committee in 1985, is it not?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And that, in fact, was a true recollection of something that occurred in 1981, was it not?

Mr. **Dredge**. Yes.

Mr. **Anderson**. Now, you are consistent today, but I kind of like the way you said it a bit before. Do you recall back in 1985 that you told the Investigating Committee that when Mr. Borders first told you he could fix cases before Judge Hastings, you didn't believe him at all?

Mr. **Dredge**. I didn't believe him.

Mr. **Anderson**. And in fact——

Mr. **Dredge**. I thought he was having a pipe dream.

Mr. **Anderson**. You thought he was having a pipe dream. I think you said you thought he was smoking Ajax, blowing smoke. You were pretty emphatic about that, weren't you?

Mr. **Dredge**. Correct.

Mr. **Anderson**. And that was because—let me not put words in your mouth—the reason you gave that you didn't believe it was that you had heard for years lawyers make similar claims, hadn't you?

Mr. **Dredge**. Not necessarily lawyers. You're the one saying lawyers, I didn't say lawyers.

Mr. **Anderson**. OK.

Mr. **Dredge**. But I've heard claims for years that people had judges fixed, Federal judges.

Mr. **Anderson**. And were some of those claims made by lawyers?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And were some of them made by bail bondsmen?

Mr. **Dredge**. No.

Mr. **Anderson**. Were some of them made by criminal associates of yours?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And in all cases, you thought, especially as it bore upon Federal judges, those claims were false, am I correct about that, sir?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And even when those claims were made by lawyers, you thought they were false, is that correct, sir?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And you thought that Mr. Borders was just another rainmaker making false claims about Federal judges, didn't you, sir?

Mr. **Dredge**. The first time I ever heard rainmaker is since I came to DC. I've never heard that term used before.

Mr. **Anderson**. If you believe me, sir, I hadn't heard it before I heard Judge Hastings say the word. But you did believe he was a lawyer making false claims about Federal judges?

Mr. **Dredge**. Let me say that I was dubious. It wasn't that I thought he was entirely wrong because I knew that he had an important position, and it was given to him by the President of the United States. I knew that he had some strength and that he had something to do with making lawyers in Washington, DC, at least, and Washington, DC—I am born and raised here—has always been Federal and that means Federal judges to me.

Mr. **Anderson**. All right, it has always been Federal, and you have heard those claims made in Washington, DC, haven't you, sir?

Mr. **Dredge**. I've heard them made all over.

Mr. **Anderson**. Well, some of them in Washington, DC?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And you didn't believe it?

Mr. **Dredge**. No.

Mr. **Anderson**. Now, let me——

Mr. **Dredge**. I didn't see any proof of it.

Mr. **Anderson**. Let me now focus for a moment, because back in 1985, you just flat out didn't believe it. Do you recall giving that testimony?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And today, after reviewing some documents and spending some time, you're only dubious. In 1981, did you not believe it, or were you just dubious?

Mr. **Dredge**. In 1981, for a long period I was skeptical, I was dubious. I didn't know that he had any reason to lie to me, I didn't know—I just didn't believe that people could fix Federal judges, so as far as I was concerned he was lying to me, for whatever reasons.

Mr. **Anderson**. For whatever reasons. Well, in point of fact, are you aware, sir, that those claims are often made by people in the hopes that they will be able to extract money as bribes or other ways, based upon that claim?

Mr. **Dredge**. Borders had no hopes in hell of extracting anything from me, and he's the one who told it to me.

Mr. **Anderson**. I understand, but you said you had heard it over the years in the course of your career. Had you heard it from people who you thought were making the claims in order to impress their friends?

Mr. **Dredge**. Yes.

Mr. **Anderson**. Had you heard it from people who were making the claims in order to extract money from others?

Mr. **Dredge**. No, I don't know anyone who has ever made the claim to me to get money, no.

Mr. **Anderson**. No, not to you, but who had made it to perhaps associates of yours?

Mr. **Dredge**. None that I'm aware of.

Mr. **Anderson**. Well, were you aware that Mr. Borders had made the claim to Joe Nesline?

Mr. **Dredge**. No.

Mr. **Anderson**. You were not aware that Mr. Borders had told Nesline that he had some power over judges?

Mr. **Dredge**. No. You're talking about initially. I mean let's stay in the same ball park. You're talking about the first of March, when he first told me, the first part of March, April, is that when you——

Mr. **Anderson**. The first March is the 1989 edition, Mr. Dredge, but let me go then to the point when you told us this morning that Mr. Nesline approached you about Trafficante. At that time, you knew that Mr. Nesline was treating Mr. Borders as a person who was claiming powers in order to extract bribes, didn't you?

Mr. **Dredge**. Yes. Your point being what?

Mr. **Anderson**. Well, thank you, sir. My point is, at the outset, based upon your experience with criminal associates, lawyers and perhaps other people around the Nation, you thought when Borders first approached you that he was falsely claiming to have a power over Judge Hastings in order to extract $150,000 for nothing from the Romanos. Am I correct, sir?

Mr. **Dredge**. That's prior to me knowing anything about Trafficante——

Mr. **Anderson**. Prior to continuances.

Mr. **Dredge**. OK.

Mr. **Anderson**. Up until the *sua sponte* continuance, that is what you thought was happening, isn't it?

Mr. **Dredge**. Yes.

Mr. **Anderson**. You sort of played along with it——

Mr. **Dredge**. Yes.

Mr. **Anderson** [continuing]. Because you thought it was false?

Mr. **Dredge**. Yes.

Mr. **Anderson**. Now, let's go to that *sua sponte* continuance. That was a matter of some concern back in May 1985, when you appeared before the Investigating Committee, wasn't it?

Mr. **Dredge**. I'm sure.

Mr. **Anderson**. Well, do you recall that Mr. Doar approached the topic several times?

Mr. **Dredge**. Are we now in the bookcase?

Mr. **Anderson**. We are back where we can get there—if your recollection isn't refreshed, I will try and guide you to some pages. Do you remember that topic?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And do you remember that Mr. Doar wasn't the only one who approached you. Judge Godbold, Judge Johnson, those other judges, they also asked you about that?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And you remember the thrust of their questions, they were desperately looking for something other than a *sua sponte* continuance—

Mr. **Baron**. I'm going to object to the characterization of that testimony. If he wants to ask him about something that was actually asked of the witness, that's fair, but I don't think it's fair for the questioner to characterize the nature of the judge's questions.

Mr. **Anderson**. That's flatout false. I'm testing the recollections that have been rehearsed several times. If he chooses to correct me, if he says "I do not recall it," fair enough, we'll go to the page. But until he stops it, I do not think that Mr. Baron should edit my cross-examination. This is cross, this man's credibility is central, and I will expect it to be characterized at various points.

Mr. **Baron**. Mr. Chairman, I think the——

The **Chairman**. The objection is overruled. Counsel can go ahead and proceed with cross-examination.

Mr. **Anderson**. Could we get the last question read back?

The **Chairman**. Would the reporter read back the last question?

[The question was read by the reporter, as requested.]

Mr. **Anderson**. They were definitely looking for something other than a *sua sponte* continuance. Do you recall that, sir?

Mr. **Dredge**. Yes.

Mr. **Anderson**. Now, let's take some examples. Do you recall that you said the initial conversation occurred when Borders blew up one day and told you, when you told him the Romanos couldn't come up with the cash? Do you recall that?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And do you recall that, according to your then recollection, you testified that Borders said, "Well, it's unbelievable. They're supposed to be in court tomorrow, the judge is supposed to do whatever he's supposed to do, but now he's going to continue it. You can't believe these guys can't come up with the money." Do you recall saying that?

Mr. **Dredge**. Yes.

Mr. **Anderson**. Do you recall that it was your understanding in 1985 that the next day the case was not continued from the defense, but from Alcee Hastings, the case was continued because he couldn't believe these guys could come up with the money? Do you recall testifying to that in May 1985? Why don't you try page 55, if you don't——

Mr. **Dredge**. In which book?

Mr. **Anderson**. Book 3, Respondent's 2, Volume 3.

Mr. **Dredge**. Page 55?

Mr. **Anderson**. Yes, sir.

Mr. **Dredge**. Yes.

Mr. **Anderson**. And at the same page, do you recall or can you verify that I'm accurate, that you testified that "Borders called me, I may have been in DC. I don't remember which way it was, and he said it's been continued, these guys had better come up with the money"?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And when you were pressed a bit for the reason why you believed in Borders' claims, you reiterated that it was Borders' statement that, and I'm quoting now—look at page 60, if you don't recall this—"So the scenario was that they don't have to ask for a continuance on the 15th, that it would just be granted by the judge, without any preamble or anybody saying anything or doing anything, and, sure enough, it was done." Do you recall saying that then?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And it was to be done by the signal—this was to be a signal, wasn't it?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And the judge was, in order to make sure the signal was there, to come on the bench, no preamble, no anything, "Gentlemen, I've got a headache, gentlemen, I've got business, continued."

Mr. **Dredge**. Right.

Mr. **Anderson**. That was to be the signal, wasn't it?

Mr. **Dredge**. Yes.

Mr. **Anderson**. This wasn't supposed to be something that the Romanos' lawyer could get by motion, was it?

Mr. **Dredge**. I don't know about—you're asking me about—I'm telling you——

Mr. **Anderson**. I'm asking you about what you said and what you understood, that you recall.

Mr. **Dredge**. And these things that I am reporting came to me from Borders. I don't know what to hell is going on in court. I'm not involved in the court process.

Mr. **Anderson**. Mr. Dredge; I could divide the question, but I understand you're testifying only to what Mr. Borders told you.

Mr. **Dredge**. Right.

Mr. **Anderson**. And that's all I'm interested in getting out.

Mr. **Dredge**. But the point is he told me on Sunday, and it happened Monday. Now, how did he know it Sunday?

Mr. **Anderson**. Yes.

Mr. **Dredge**. No case was going on, nothing was happening, it was Sunday and that is when he told me.

Mr. **Anderson**. I understand that that's your 1989 testimony, and I intend to come back to that point, about Sunday and Monday and the rest of that. Right now, I'm really trying to focus on your versions of what it was he told you.

Let me take another illustration, and if you don't recall it, it's on page 71. When you were pressed again, you reiterated and you said, "I mean, it wasn't that, you know, it's not like the defense could run in there and ask for postponement because of whatever reasons, they were going in there to do whatever was going to be done, and, lo and behold, they were ready to go, and the judge said, well, I've got a headache or something, whatever in heck he said, I don't know, but something, this case was continued." That is what Mr. Borders told you happened, wasn't it?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And that was the kind of signal that persuaded William Dredge, it's your testimony, isn't it, sir, that Borders' powers were something more than blowing smoke?

Mr. **Dredge**. Yes.

Mr. **Anderson**. Now, in each of these assertions, just to be sure that I think we are in agreement on this one, you've consistently maintained that it was Borders who made that statement to you, the case will be continued, haven't you?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And in each of these assertions, you maintained that it was Borders who told you the case had been continued, isn't that correct, sir?

Mr. **Dredge**. Yes.

Mr. **Anderson**. Now, I think you have been consistent in saying—but correct me if I'm wrong, either as to the truth of the matter or the consistency—that Borders told you the day before the case was to be continued, that it was up in court and would be continued. Am I correct about that?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And it is he who told you the case was in court tomorrow and that it would be continued?

Mr. **Dredge**. Yes.

Mr. **Anderson**. Now, I'm not sure you're consistent and I want to get a fix on the 1988-1989 edition of this. How long after you understood the case had been continued did Mr. Borders tell you, "low and behold, it was continued"?

Mr. **Dredge**. I believe it was the following day. I was arrested on May 10th, it was May 11th, it could have been May 12th.

Mr. **Anderson**. In any event, just so we have the testimony—and I think your prior testimony is consistent on this point—the day before, Mr. Borders told you on day one, just to use a day, the case is in court tomorrow and will be continued *sua sponte;* is that correct?

Mr. **Dredge**. I'm not an attorney, I don't know what *sua sponte* is. He told me it was going to be continued the next day, it would be postponed.

Mr. **Anderson**. And it would be continued by the judge, without request of the——

Mr. **Dredge**. Come hell or high water.

Mr. **Anderson**. Come hell or high water, without request. And that was done the day before, day two in my lexicon is the day Mr. Borders told you there would be courtroom proceedings, and then the day after, Mr. Borders said, "It has been done and they'd better come up with the money." That has been your consistent sequence, correct?

Mr. **Dredge**. Right, sir.

Mr. **Anderson**. And in all of these accounts and today here, you have maintained that William Borders was the only source of that information?

Mr. **Dredge**. Absolutely.

Mr. **Anderson**. And in all of these accounts, you've consistently maintained that you never spoke with Judge Hastings, except possibly you were introduced to him once in Mr. Borders' office?

Mr. **Dredge**. Once, and there was no conversation.

Mr. **Anderson**. No conversation?

Mr. **Dredge**. None.

Mr. **Anderson**. So, you've been consistent throughout, you've never spoken with Judge Hastings?

Mr. **Dredge**. Never.

Mr. **Anderson**. And that carried through until June 21, 1989?

Mr. **Dredge**. It carries through to today.

Mr. **Anderson**. And in all of these accounts, you've consistently maintained that your belief that Borders had any arrangement, any control or influence with Judge Hastings was your claimed belief that Mr. Borders had arranged a continuance in his court, is that correct, sir? That's the only basis?

Mr. **Dredge**. Right.

Mr. **Anderson**. Thank you, sir.

Now, as you may have gathered, Mr. Dredge, this is a case in which people are looking at patterns of contacts from telephone records, travel records and what have you. Do you recall that Mr. Doar told you, and have you since learned that he obtained the 1981 telephone records from Borders' home and office, and from your home and office, your antique shop?

Mr. **Dredge**. Yes, I have learned that.

Mr. **Anderson**. And do you recall that the records for your telephones covered the entire year 1981?

Mr. **Dredge**. No, I just know that they have them. I don't know how long——

Mr. **Anderson**. Well, from January through December, do you recall that?

Mr. **Dredge**. I know that they have the records. How far back and how far up, I don't know exactly how far or from when to when.

Mr. **Anderson**. Well, let me——

Mr. **Dredge**. I never looked at all of them and I never looked at the dates actually on all of them when they were. I just know that they have my phone records.

Mr. **Anderson**. Now, let me be sure I understand that. In the 18 hours you spent examining documents, you did not go through them all and examine all the dates?

Mr. **Dredge**. Did I look at all the dates? No, I didn't.

Mr. **Anderson**. Did you look at dates that were pointed out to you?

Mr. **Dredge**. No. I went through them all and I—let's hold it a second. I went through and looked at the records, at the dates that were there. It seems to me you said January. I'm not sure that I recall any January dates. It seems to me that I recall February and March dates, but I'm not sure that I recall January dates or December dates. I only recall about a six-month or seven-month span. It may well have went on longer, but you're asking me specifically what I remember.

Mr. **Anderson**. Specific records. Well, do you recall, either from the examination you did there or from what Mr. Doar showed you, that they had obtained the records from Borders' home and office only for May through October 1981?

Mr. **Dredge**. No.

Mr. **Anderson**. And Mr. Doar also showed you the telephone message logs that were maintained in Mr. Borders' office. Do you recall that, sir?

Mr. **Dredge**. He may well have, but I wouldn't have any knowledge of whether he had it on the logs.

Mr. **Anderson**. Did he identify them as such to you?

Mr. **Dredge**. He may well have. Can we go in the book? Do you want to tell me where we're at?

Mr. **Anderson**. Look back at Volume 3, Respondent's 2, at page 104.

Mr. **Dredge**. That hasn't anything to do with me. It says Witness Schopperle.

Mr. **Anderson**. I think you are in the wrong—you should be in Volume 3.

Mr. **Dredge**. I'm here, Number 3.

Mr. **Anderson**. Respondent's 3 or—you should be in Respondent's 2, which is IC Committee 3, May 22nd.

Mr. **Dredge**. Well, that ain't what this says. This is 2.

Mr. **Spaeder**. That's Respondent's 2, Volume 3.

Mr. **Dredge**. OK.

Mr. **Anderson**. And he did show you message logs. Now, had you seen those message logs when you examined documents with Mr. Baron?

Mr. **Dredge**. No.

Mr. **Anderson**. No, you didn't examine those?

Mr. **Dredge**. No.

Mr. **Anderson**. Now, did Mr. Doar tell you that he had also acquired travel records from your travel agent?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And you saw some of those records when you examined documents in preparation for this testimony, is that correct, sir?

Mr. **Dredge**. Yes.

Mr. **Anderson**. Now, if you will assume for the moment that those were the documents, and now you've seen some of them, let me ask you: Given your testimony here today, would it surprise you to learn that the first contact recorded between Mr. Nesline and Mr. Borders shown in those records didn't occur until April 9, 1981? Would that surprise you, sir?

Mr. **Dredge**. Why should it?

Mr. **Anderson**. Well, I don't know whether it should or not. I just asked does it?

Mr. **Dredge**. It doesn't surprise me.

Mr. **Anderson**. Well, given your testimony, does it surprise you that the first evidence of any contact between you and Mr. Borders occurred on May 5th, reflected in the documents, is May 5, 1981?

Mr. **Dredge**. Does that surprise me?

Mr. **Anderson**. Yes.

Mr. **Dredge**. Did you get his phone records?

Mr. **Anderson**. Yes.

Mr. **Dredge**. And that reflects that, May 5th?

Mr. ANDERSON. Anything in any of those records—in point of fact, that is an Eastern Airlines reservation record where he left your number on his trip to Miami. That's the first documentary evidence of any contact between you and Mr. Borders. Does that surprise you?

Mr. DREDGE. Yes.

Mr. ANDERSON. And I think you testified earlier today and before that the way originally Mr. Borders got to you was that Joe Nesline called you and asked if he could give Bill Borders your number. Do you recall that, sir?

Mr. DREDGE. Yes.

Mr. ANDERSON. And thereafter, you and Mr. Borders discussed the Romano deal by telephone, while you were in DC, is that correct, sir?

Mr. DREDGE. By telephone, while I was in DC?

Mr. ANDERSON. By telephone and while you were in DC.

Mr. DREDGE. Yes.

Could I stop for one minute and ask my lawyer a question?

The CHAIRMAN. Yes, you may.

Mr. DREDGE. I mean it's pertinent to what we're talking about.

The CHAIRMAN. That's fine, go right ahead, ask your lawyer.

[Pause.]

Mr. DREDGE. I'm sorry.

The CHAIRMAN. Is the witness prepared to continue?

Mr. DREDGE. Yes.

The CHAIRMAN. Would you restate your last question or your next question?

Mr. ANDERSON. It was in the earlier conversations that Mr. Borders expressed to you his reasons for seeking out the Romanos, is that correct, sir?

Mr. DREDGE. What earlier conversations are we talking about now?

Mr. ANDERSON. Well——

Mr. DREDGE. We just got off from asking me if I would be surprised if I found that he called me in May, and now we're on to something else.

Mr. ANDERSON. Then let me back up.

Mr. DREDGE. OK.

Mr. ANDERSON. I want you to follow me on this one. Initially, before Mr. Borders had your telephone number, Joe Nesline, as I understand your testimony, called you and asked, "Is it OK if I give Bill Borders your telephone number?"

Mr. DREDGE. Right, sometime in the latter part of March, first of April.

Mr. ANDERSON. Well, whenever, that is how it happened?

Mr. DREDGE. Yes.

Mr. ANDERSON. And given that, would it surprise you that the first evidence of a telephone call appears on Mr. Borders' telephone records for May 7, 1981?

Mr. DREDGE. No, it doesn't surprise me.

Mr. ANDERSON. It doesn't surprise you——

Mr. DREDGE. No.

Mr. ANDERSON [continuing]. That the first telephone contact from Mr. Borders to you——

Mr. **Dredge**. It does not surprise me.

Mr. **Anderson**. Well, does it surprise you that the first indication of a telephone call from you to Mr. Borders' office appears on a message log while you were in Washington, on that May 15th–18th trip?

Mr. **Dredge**. No, that doesn't surprise me.

Mr. **Anderson**. And would it surprise you that the first evidence on your long-distance phone records, for your home and for Bill's place, that shows a call from one of your numbers to one of Mr. Borders' numbers, occurred on May 19, 1981?

Mr. **Dredge**. No, that doesn't surprise me, either.

Mr. **Anderson**. Well, would it surprise you that the message logs in Mr. Borders' office reflect that Mr. Nesline was regularly reaching out to Mr. Borders after April 9, 1981, but never before?

Mr. **Dredge**. No, that doesn't surprise me.

Mr. **Anderson**. Now, let me pause a bit. You testified today that early in your relationship, you and Mr. Borders worked out an elaborate code system, pay phone to pay phone. Am I correct in that?

Mr. **Dredge**. Right.

Mr. **Anderson**. Now, that isn't something you told the Investigating Committee back in 1985, was it?

Mr. **Dredge**. I don't believe so.

Mr. **Anderson**. And when Mr. Doar showed you all those telephone logs and telephone bills and everything, you didn't say to him, "Well, Mr. Doar, you know, those wouldn't be accurate, we had a code system." You didn't tell him that then, did you?

Mr. **Dredge**. No.

Mr. **Anderson**. No. And did you address that specifically on June 21, at the deposition?

Mr. **Dredge**. I believe we did.

Mr. **Anderson**. It certainly was a bit more elaborate today, wasn't it?

Mr. **Dredge**. I don't know that it was any more elaborate than the last time.

Mr. **Anderson**. We can return to that point. But as I understood you today, the system was this: You would call Mr. Borders at his office or somewhere and say, "Bill, go to pay phone three;" is that correct?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And then you would go outside to one of your pay phones and call him at pay phone three?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And sometimes Mr. Borders would call you and say, "Billy, go to Lincoln Mall," or wherever it was; is that correct, sir?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And you would do it.

Mr. **Dredge**. Yes.

Mr. **Anderson**. But at least the initial contacts were made by you, or either from Bill's place or your residence, weren't they?

Mr. **Dredge**. No.

Mr. **Anderson**. Where did you make your initial contacts from?

Mr. **Dredge**. I was in DC many, many times.

Mr. **Anderson**. I understand that. I'm talking about——

Mr. **Dredge**. Well, you said the initial contact.

Mr. **Anderson**. Let me correct myself. When you were invoking the code system, you would call Bill and tell him to go to a pay phone, wouldn't you?

Mr. **Dredge**. Let's put it in its proper perspective.

Mr. **Anderson**. Sure.

Mr. **Dredge**. Most calls that I made to Bill Borders from a pay phone was in response to his having called me to give him back an answer. I didn't call him to tell him to go to a pay phone to get back to me.

Mr. **Anderson**. All right.

Mr. **Dredge**. Ninety percent of the time, it was him telling me to go to another phone.

Mr. **Anderson**. So, let me understand that. Was it your understanding that Mr. Borders was calling you from his office to tell you to go to a pay phone?

Mr. **Dredge**. I don't know where he called me from.

Mr. **Anderson**. But most of your calls were to Mr. Borders from either your home or business and didn't involve your telling me to go to a pay phone? I just want to get it right.

Mr. **Dredge**. I'm sure you do. Most of the calls that Borders and I had was through pay phones on his and my part both, most of the phone calls when I was in Miami.

Mr. **Anderson**. Well, when you called, just so we are certain on this, I understand that most of Mr. Borders' calls, according to your testimony today, he would tell you to go out to a pay phone, that is your view today?

Mr. **Dredge**. Yes.

Mr. **Anderson**. Now, I don't understand. Are you telling me that ordinarily when you called Mr. Borders, you would tell him to go to a pay phone or not?

Mr. **Dredge**. Ordinarily, I had several numbers; I had his mother's number; I had his girlfriend's number, I had his office number; I had pay phone numbers. If he called me and wanted me to do something or I did something in response, I called him back, or I had something to tell him from his inquiries to me, I would try to get him at his office—it depends. If it was at nighttime, I would call his girlfriend; I would call his house, I would call his office. If I got hold of him, I would tell him to go to pay phone one, go to pay phone two. Do I know where those phones are at in DC? No, I don't.

Mr. **Anderson**. That wasn't really my question, so let me try and be clearer. When you called Mr. Borders at his office, at his mother's number, at his home number, at his girlfriend's home number, or wherever; where was Bill Dredge calling from?

Mr. **Dredge**. Pay phones, my house, my store.

Mr. **Anderson**. Now, early in the relationship, I take it you had several communications with Mr. Borders before he told you he claimed any power?

Mr. **Dredge**. Right.

Mr. **Anderson**. The first conversation, "Find out what kind of guys the Romanos are, would you?"

Mr. **Dredge**. Right.

Mr. **Anderson**. The second conversation, "They're stand-up." Third conversation, "Tell them there's a lawyer in DC that may be able to help them with the case." Am I correct?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And we're going through this period of time when you have no inkling that Bill Borders is doing anything wrong?

Mr. **Dredge**. Right. I'm calling from my home or the office.

Mr. **Anderson**. So, those would all be there?

Mr. **Dredge**. Right.

Mr. **Anderson**. And in light of that, does it surprise you that the first telephone call billed to your home or office that has been discovered comes up on May 19, 1981?

Mr. **Dredge**. No.

Mr. **Anderson**. You don't think you called Mr. Borders before May 19, 1981? This is still the innocent period.

Mr. **Dredge**. May is the innocent period, May 19th? Not hardly.

Mr. **Anderson**. Well, let's say you were calling Mr. Borders during the innocent period, which was before you thought he had any claimed power.

Mr. **Dredge**. Before May 10.

Mr. **Anderson**. Before May 10, and yet your telephone records don't reflect any billings to any of these numbers before May 19th. Does that surprise you?

Mr. **Dredge**. Not really.

Mr. **Anderson**. Why not?

Mr. **Dredge**. Because I used pay phones.

Mr. **Anderson**. You used pay phones even before? You understood, I thought I just heard you say you called him from your house and your office up until you thought he was involved in a fix.

Mr. **Dredge**. Mr. Anderson, I've used pay phones all my adult life, as opposed to using my own phones, for whatever reasons. It is not strange or odd for me to use a pay phone.

Mr. **Anderson**. Mr. Dredge, I assume that there are many things that are not strange or odd for you, but I thought I just heard you say that, prior to the time you understood that William Borders was trying to hold himself out as having this power, you called him from your home or your office.

Mr. **Dredge**. No. You see, when Nesline asked me if it was okay to give him my phone number, I did. I think you should reflect on Borders' things, not mine. Borders instituted the phone calls, not Bill Dredge. Do you have anything to indicate that Borders and I was together or not together prior to May 19th?

Mr. **Anderson**. I can go back to May 5th and I can get your 1989 election to push it back to March. But if I examine your travel records, if I examine your telephone records, if I examine his telephone records, no, sir, I can't, but I can sure find a lot of contacts in those records after, and that is what we are probing.

Now, given the fact that there was an innocent period where, no matter how you communicated in this relationship before you knew about it, and then there was a not so innocent period, when you in fact say you believe that Borders had this power and you, in fact, acknowledge that it was in your interest to keep it going. Can we call that the not so innocent period?

Mr. DREDGE. Whatever you like.

Mr. ANDERSON. Would it surprise you to know that there is a pattern of regular contacts reflected in your phone records, your long-distance billing records with Mr. Borders during the not so innocent period?

Mr. DREDGE. Nothing surprises me about the phone calls.

Mr. ANDERSON. I gather that nothing does, sir. I am still like young and naive. Many things surprise me.

Mr. Chairman, can I suggest we take a recess? I think I have reached a logical breaking point and I want to move to a new line. I can go on through that line, if you would like, but I have considerable more.

The CHAIRMAN. Why don't we recess for the lunch hour and we will reconvene at 2:00 o'clock and continue with cross-examination.

[Whereupon, at 11:56 a.m., the committee was in recess, to reconvene at 2:00 p.m., the same day.]

AFTERNOON SESSION

The CHAIRMAN. The committee will come to order.

The committee will continue with the case before us.

Mr. Anderson, you are engaged in cross-examination. Please proceed.

Mr. ANDERSON. Thank you, Mr. Chairman.

We are back where we were, Mr. Dredge, and let me try and summarize what I understood from your testimony. As I understand it, your testimony is you first met with Mr. Borders in early March; is that correct, sir, 1981?

Mr. DREDGE. Yes.

Mr. ANDERSON. And between early March and May 10th, you essentially thought Mr. Borders was blowing smoke in the claims he made, is that correct, sir?

Mr. DREDGE. Yes.

Mr. ANDERSON. And then, after May 12th, you then were persuaded that there was some credibility and you believed Mr. Borders' claims that he had powers to fix cases, is that correct?

Mr. DREDGE. Yes.

Mr. ANDERSON. And then it was between May 12th and July 20th, during that period of your belief, you had not gone to the authorities yet and you were really just trying to put Mr. Borders off; is that correct?

Mr. DREDGE. Yes.

Mr. ANDERSON. And on July 20th, you went in to the authorities in order to make a deal.

Mr. DREDGE. Yes.

Mr. ANDERSON. And between July 20th and September 10th, you were acting in your own interests trying to keep Borders' interest sparked and alive so that it would be ready if the Government accepted your proposal?

Mr. DREDGE. Yes.

Mr. **Anderson**. And then from September on, until October 9 or whenever, the deal was going down, the Government had accepted and we are proceeding on that basis; is that correct, sir?

Mr. **Dredge**. Well, I'm only aware of up to the Government's deal, September 12th.

Mr. **Anderson**. Well, at a minimum, you are aware that on September 10, you made a call to Mr. Borders, on September 12 you introduced Rico Romano to him at the airport——

Mr. **Dredge**. Right.

Mr. **Anderson** [continuing]. And on October 7, you had some conversations with Mr. Borders?

Mr. **Dredge**. Two phone calls in the interim, right.

Mr. **Anderson**. So, at least in that period, the deal was going down?

Mr. **Dredge**. Correct.

Mr. **Anderson**. Just to reprise briefly, I take it that it does not surprise you that neither your records nor Mr. Borders' reflect any communication prior to May 10th, even though you met in March, is that correct?

Mr. **Dredge**. It doesn't surprise me.

Mr. **Anderson**. And if I understood your reasons, you are not surprised because both you and Mr. Borders were experienced in establishing a clandestine pay-phone-to-pay-phone communication system; is that correct?

Mr. **Dredge**. True.

Mr. **Anderson**. And I take it, at least one purpose of that type of system is avoiding having anyone intercept your conversations; is that correct?

Mr. **Dredge**. Whether they are clandestine or not, I will ofttimes use a pay phone.

Mr. **Anderson**. All right. Then, I take it that one purpose of doing it, especially under a system like this, is to prevent people from intercepting your conversations?

Mr. **Dredge**. Exactly.

Mr. **Anderson**. And one of the reasons why you don't use credit cards or things like that is you don't want to leave any paper trail through which people might be able to later figure out where you were and whom you might have spoken with; is that correct, sir?

Mr. **Dredge**. That's fair.

Mr. **Anderson**. Now, turning to the second period, the May 10th to July 20th, throughout that period, you believed Mr. Borders when he had his claim, that he had this claimed power over Judge Hastings, didn't you?

Mr. **Dredge**. I don't know that he had any power over him.

Mr. **Anderson**. You believe that he could fix the *Romano* case before Judge Hastings?

Mr. **Dredge**. Right.

Mr. **Anderson**. And thus, at that point you believed that there was some reason for Mr. Borders' clandestine establishment of a pay phone-to-pay phone code system?

Mr. **Dredge**. I knew that earlier on.

Mr. **Anderson**. Now, does it surprise you, I ask—and I think I may have asked this, but let me just reprise it—does it surprise you to learn that there is a paper trail in your telephone records and Mr. Borders' evidencing directly 10 contacts during this clandestine period?

Mr. **Dredge**. No, that doesn't surprise me.

Mr. **Anderson**. Well, from your side, would it surprise you that more than six of those calls were charged to your home or business phones and are directly reflected in the billings?

Mr. **Dredge**. No, that doesn't surprise me.

Mr. **Anderson**. Well, I guess I understood your testimony before about why the absence didn't surprise you, but now could you explain why doesn't it surprise you that during this period, both of you were openly permitting your phone records to reflect contacts?

Mr. **Dredge**. I would like to say that I'm not concerned or was never concerned with whether anyone would know that I was talking to anybody. They certainly couldn't wire a pay phone, that was my concern. Obviously, it was Mr. Borders' concern.

Mr. **Anderson**. It was——

Mr. **Dredge**. Whether they knew we was talking back and forth or not doesn't make any difference.

Mr. **Anderson**. Well, if that was your concern prior to May 10, when you didn't think there was anything particularly clandestine there, why did you not maintain the same pattern after you actually believed there was some reason for clandestine communication?

Mr. **Dredge**. I don't know that I altered anything.

Mr. **Anderson**. Well, it's not altered. Why suddenly do we find no record prior to May 10 of these contacts, and suddenly have a significant number of contacts in a fairly short period, right there in the billing records?

Mr. **Dredge**. I don't know.

Mr. **Anderson**. I don't, either. Now, after you had gone to the authorities to make a deal on July 20th, you wanted to maintain the Romano scheme in Borders' mind, it was affirmatively then in your interest?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And from that period through September 10th, you would have wanted to create in Mr. Borders' mind that you shared his desire for a clandestine communication and secrecy, that there was really a deal about to go down, wouldn't you have, sir?

Mr. **Dredge**. Run that by me again.

Mr. **Anderson**. Well, throughout that period, you were trying to persuade Mr. Borders that you were in fact in contact with the Romanos, weren't you?

Mr. **Dredge**. Now, you used the term "persuade." I believed that from the "git-go" he thought I was in touch with the Romanos. I was not looking to alter that, any way, shape, form or fashion. It was to remain that way, especially after it became to my best interest, as opposed to his.

Mr. **Anderson**. But after the Romanos had been sentenced to three years incarceration on July 8th, it looked like there wasn't going to be a deal, didn't it?

Mr. **Dredge**. No, I didn't get that impression at all. Remember, it was being postponed to give them one last time to make a move.

Mr. **Anderson**. Well, was it being postponed on July 8th?

Mr. **Dredge**. I don't know about July 8th. I don't know anything about what was going on in court. He did not tell me about it, I didn't ask about it, and I certainly wasn't talking to the Romanos, they couldn't tell me about it.

Mr. **Anderson**. So, it is your position that you did not know that the Romanos had been sentenced to three years incarceration on July 8th?

Mr. **Dredge**. No, I didn't.

Mr. **Anderson**. And as of July 20, as far as you knew, it still was being postponed, waiting for you to make a deal, is that correct, sir?

Mr. **Dredge**. Yes, I knew nothing about——

Mr. **Anderson**. You had no knowledge about that?

Mr. **Dredge**. No.

Mr. **Anderson**. In any event, in this, it was at least in your interest to keep Mr. Borders' interest in making a deal alive?

Mr. **Dredge**. Correct.

Mr. **Anderson**. Now, would it surprise you to know that there are 10 recorded contacts in the phone records, public phone records, even in this period?

Mr. **Dredge**. It doesn't surprise me.

Mr. **Anderson**. Now, it was on September 10th or thereabouts that you, in fact, made your deal with the Government, wasn't it, sir?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And it was at that time you made one call to Mr. Borders and introduced him to Mr. Rico, isn't that correct?

Mr. **Dredge**. That was on the 12th.

Mr. **Anderson**. On the 12th.

Mr. **Dredge**. The phone call was on the 10th, the meeting was on the 12th.

Mr. **Anderson**. And I don't suppose it surprises you that the only recorded contacts between you and Mr. Borders between the 10th and October 7th are the three conversations that the Government intercepted, after they had placed a wiretap on Mr. Borders' phone. Is that correct, sir?

Mr. **Dredge**. What doesn't surprise me?

Mr. **Anderson**. That suddenly the activity in your telephone records ceases to reflect any contact, does that surprise you?

Mr. **Dredge**. No.

Mr. **Anderson**. But you and Mr. Borders were both familiar throughout that period with the pay-phone-to-pay-phone system?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And would it surprise you that there may be one contact reflected in your phone bills that you haven't thought about?

Mr. **Dredge**. There may be a lot of them in there that I haven't thought about. I don't know what you're driving at. If you would——

Mr. **Anderson**. We will come back to that.

Mr. **Dredge**. OK. Why don't we just stick with it. My mind stays in the same place. You want to jump all over the place, and I'd like to stay where I can think.

Mr. **Anderson**. Mr. Dredge, for eight years you knew that this man wanted you at his trial in 1983, didn't you?

Mr. **Dredge**. Pardon?

Mr. **Anderson**. You knew that this man wanted you to be a witness at his trial in 1983, didn't you?

Mr. **Dredge**. He may have said that. I don't really believe he wanted me there.

Mr. **Anderson**. You knew he had written to Mr. Spaeder, didn't you?

Mr. **Dredge**. Pardon?

Mr. **Anderson**. You knew he had written to Mr. Spaeder, didn't you?

Mr. **Dredge**. Yes.

Mr. **Anderson**. You knew that he had asked the Government to order the court to produce you as a material witness, didn't you?

Mr. **Dredge**. Probably.

Mr. **Anderson**. You knew, in fact, you had talked at one point to his investigator, didn't you?

Mr. **Dredge**. That was early in about 1982.

Mr. **Anderson**. And you knew——

Mr. **Dredge**. That was before the Hastings affair, that was back I believe in April or May of 1982.

Mr. **Anderson**. But that was after the indictment?

Mr. **Dredge**. Whose indictment?

Mr. **Anderson**. His indictment.

Mr. **Dredge**. Probably.

Mr. **Anderson**. And you knew that he had written to your lawyer, to your lawyer's partners, to you, to ask the Government to have you produced and he wanted you at his trial?

Mr. **Dredge**. I would like to say something here at this point. You keep saying he talked to my lawyer. I did not talk to my lawyer from after I left the deal, I had no contact with Roger Spaeder or Peter Kolker and they had no way to get in touch with me. So, if these letters came about or whatever came about, I truly don't believe that I was privy to it, because he couldn't get to me.

Mr. **Anderson**. Could Agent Murphy get to you?

Mr. **Dredge**. After a fashion, yes.

Mr. **Anderson**. And he could have reported to you the concerns the judge was expressing about your production, couldn't he have?

Mr. **Dredge**. You will have to ask Murphy.

Mr. **Anderson**. Well, he could have, couldn't he? I'm asking you whether he did.

Mr. **Dredge**. No, he didn't.

Mr. **Anderson**. It is now your position you weren't aware that the judge wanted you at his 1983 trial?

Mr. **Dredge**. I don't know, Mr. Anderson, whether that I knew that he did or—I don't know, to be perfectly frank, I don't know whether he did. You are asking me a long time later on whether this thing happened back in 1982 or whenever it was. I don't know whether he wanted me as a witness at this trial. Was it conveyed to me? Certainly, not by my attorney because he could not get hold of me. Did Murphy tell me about it at some point in time? Maybe. Did he tell me about it when the thing was ongoing? I seriously doubt it—and I say ongoing, I'm talking about Hastings' trial.

Mr. **Anderson**. And your uncertainty relates to the fact that these events occurred so long ago that your recollection is——

Mr. **Dredge**. No, they are your words and they are not mine. Again, I'm telescoping all of this stuff in, and you have all of these things written down. Now, if you would have allowed me to write all this stuff down and come in here and read it all off to you, I could flip from page to page or from memory, and I'd tell you all about it. I don't have the benefit of that, so don't try to confuse me or get me screwed up or try to get me somewhere that I'm not.

If he knew, I did not know. I can only say this to you, in all fairness to Judge Hastings: He sure as hell didn't want me at his trial.

Mr. **Anderson**. And I can only say to you that it's my understanding he sure as hell did.

Mr. **Dredge**. Then he would have been found guilty, I believe.

Mr. **Anderson**. Well, if you had been there, he would have at least had the opportunity to confront you before a jury, wouldn't he?

Mr. **Dredge**. I don't want to argue with you.

Mr. **Anderson**. I can understand that.

Mr. **Dredge**. And I'm not going to get excited, and I'm not going to get mad, and I'm not going to get bent out of shape. I will leave that to you.

Mr. **Anderson**. Good. After nine years, maybe I'm entitled.

Now, let me turn briefly to a different category of records, Mr. Dredge. You have examined your travel records, now, haven't you?

Mr. **Dredge**. Yes.

Mr. **Anderson**. Well, you examined some of them this morning, because they were put into evidence.

Mr. **Dredge**. Some of them, yes.

Mr. **Anderson**. And are you aware that for the period January through April, every trip you made into the area was a flight from Fort Lauderdale to Baltimore Airport?

Mr. **Dredge**. Of all the records they may have, that may be true.

Mr. **Anderson**. And are you aware that, of all the records they may have, that every trip you made from May through October into Washington, you flew from Miami to DC National Airport?

Mr. **Dredge**. Okay.

Mr. **Anderson**. And I don't suppose it would surprise you to know that there are no records of your travels after July 20, 1981?

Mr. **Dredge**. No, that doesn't surprise me, either.

Mr. **Anderson**. It didn't me, either.

Now, Mr. Dredge, you do recall that you were in Washington from July 7 to July 9, 1981. Do you recall that, sir?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And you do recall you spent time with Mr. Borders in that period?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And do you recall that it was on July 7th that Mr. Borders won his suit against President Reagan?

Mr. **Dredge**. Yes.

Mr. **Anderson**. Do you recall that he was elated?

Mr. **Dredge**. Yes.

Mr. **Anderson**. Now, I truly do want to refresh your recollection here and I want to take this slow. I wonder if I could ask you if you would consult pages 67 and 68 of your 1985 testimony, that would be Respondent's Exhibit No. 2, Committee Volume 3.

Mr. DREDGE. What pages was that, again?

Mr. ANDERSON. 67 and 68.

The CHAIRMAN. Do the managers for the House indicate there is a vote in the House, is that what's happening?

Mr. BRYANT. There is, Mr. Chairman, although at this particular juncture in the trial we are content to proceed with Mr. Baron. We would, however, not like to set the precedent that we would never be allowed to recess the proceedings for us to go and vote.

The CHAIRMAN. We don't work on a lot of precedent on that matter. We will go ahead with the cross-examination with Mr. Baron present.

Mr. BRYANT. Thank you.

Mr. ANDERSON. Have you had a chance to consult those two pages, sir?

Mr. DREDGE. 66 and 67?

Mr. ANDERSON. 67 and 68.

Mr. DREDGE. I am on 66 and——

Mr. ANDERSON. Starting about line 8 on page 67.

Mr. DREDGE. Okay.

Mr. ANDERSON. Now, at that time, you did recall that Borders was elated over his victory over President Reagan?

Mr. DREDGE. Yes.

Mr. ANDERSON. And you do recall that at that time he said he had just beat the President and that "he could a few more judges, or whatever, and again he mentioned Judge Hastings to me and another judge that"—at that time you did not recall his name. Is that correct, sir?

Mr. DREDGE. Yes, sir.

Mr. HASTINGS. And do you recall the name of the other judge today?

Mr. DREDGE. No.

Mr. HASTINGS. Now, let me, Mr. Dredge—and I don't want to confuse you, so let me do as Mr. Baron did this morning—tell you something that is in evidence and undisputed. The *Romano* case was only scheduled for sentencing twice, once on May 11th and once on July 8th.

On May 11th, it was continued, at the urgent motion of the defendant's counsel, Judge Hastings didn't announce ready—he did announce that he was ready to proceed with sentencing, no *sua sponte* there.

Now, you have testified that Mr. Borders' representation to you that Judge Hastings would continue the sentence came before the sentence. Do you recall that?

Mr. DREDGE. Yes.

Mr. ANDERSON. And it was the day after the sentence when he told you Judge Hastings had continued, and I think you have testified that Mr. Borders was the only source of your information at that time about the *Romano* case. Is that correct, sir?

Mr. DREDGE. Correct.

Mr. ANDERSON. You didn't know it was in court records?

Mr. DREDGE. No.

Mr. ANDERSON. So, all you had to go with was he did, he has?

Mr. DREDGE. Right.

Mr. ANDERSON. Now, again, you understand, Mr. Dredge, why those of us who have done this analysis, who rely upon what is shown in the physical evidence of the records, might conclude that the only possible date that these two possible conversations could have taken place were on July 7th and July 9th. Do you understand that view?

Mr. DREDGE. I really don't.

Mr. ANDERSON. All right, let me just take you briefly through it. The records show a first contact beginning in May, your recount this morning indicates that a substantial period of time passes before you get to the point of having this conversation that the judge is mad, have him come up with the money, tell you whether he's going to continue the case tomorrow, and then two days later you're told he did continue it.

Mr. DREDGE. Right.

Mr. ANDERSON. So, those of us who weren't aware of pay phone-to-pay phone or other kinds of things might see in that firm evidence, yes.

Mr. BARON. I object. Can we have a question, instead of an editorial?

Mr. ANDERSON. Well, I think I have a question here.

Mr. BARON. It would be nice to hear it.

Mr. ANDERSON. I am asking if he can understand a view.

The CHAIRMAN. The objection is overruled. You can continue.

Mr. ANDERSON. You can understand how we could get to that view? You were in Washington on July 7th, you were in Washington on July 9th, there was a sentencing on July 8th, and within the pattern of the physical evidence, it makes sense that July 7th would have been the date when he told you it was going to be continued, and July 9th would have been the date when he told you it had been. You can understand that view?

Mr. DREDGE. All right. Go ahead.

Mr. ANDERSON. All right.

Now, Mr. Dredge, let me assure you, in terms of what the evidence in this case will show, it is largely a matter of indifference to me which position you take, but in terms of my working through the rest of my notes and where we go from here, it is a pretty important matter to me that you search your recollection and that you take the final position before the Senate. Did that conversation occur on May 10th and May 12th, or did that conversation occur on July 7th and July 9th, to the best of your recollection, 1989, July 11th, before the Senate of the United States, sir, under oath, which did it——

Mr. DREDGE. The day that I was arrested, Sunday, May 10th.

Mr. ANDERSON. And that is your recollection.

Mr. Dredge, let me change topics a bit. You have been characterized in various sources as essentially a career criminal, whose career extends back into the 1940s. Is that a fair characterization?

Mr. DREDGE. Depending on which side of the board you're at.

Mr. ANDERSON. Is it a characterization that would be supported if we went through your arrest record and other records that the FBI have and that the Investigating Committee looked at and that the House managers have looked at?

Mr. DREDGE. My record is there for everybody to look at. I'm not disputing what it says.

Mr. ANDERSON. You have been involved in criminal activities repeatedly for almost 40 years, or perhaps more than 40 years?

Mr. DREDGE. I think prior to the Baltimore guilty plea, my previous conviction I believe was in 1955, some thirty-odd years between.

Mr. ANDERSON. But there had been some—between 1955 and 1974, there had been some arrests and other activity that would be reflected in your FBI file?

Mr. DREDGE. I don't think that that—if that means I am an ongoing criminal, I suppose so.

Senator LEAHY. I didn't hear the last answer, Mr. Chairman.

The CHAIRMAN. Would you repeat that last answer?

Mr. DREDGE. I said because I was arrested, if that means that I'm an ongoing criminal, I guess so. It doesn't mean that to me, but you're the one that's putting the interpretation there.

Mr. ANDERSON. But the fact is that——

Mr. DREDGE. I was arrested many times.

Mr. ANDERSON. Many times?

Mr. DREDGE. Many times.

Mr. ANDERSON. Now, after 1974, until the Baltimore incident, you weren't arrested any more, were you?

Mr. DREDGE. No, sir. I don't believe so, anyway.

Mr. ANDERSON. It was in 1974 that you reached an agreement with a man named Jimmie Harmon, wasn't that correct, sir?

Mr. DREDGE. In 1974? It could well be, I don't know. I don't remember.

Mr. ANDERSON. Well, Mr. Harmon's records and those things would reflect that, would they not?

Mr. DREDGE. I'm sure. I'm sure they would.

Mr. ANDERSON. And from whatever time you initially made your connection with Mr. Harmon, you were providing information to Mr. Harmon concerning criminal activities of underworld figures, were you not?

Mr. DREDGE. I told Jim Harmon on one occasion, for sure, about some machine guns that were being offered for sale and being delivered out of St. Louis, that I did. And on another occasion, when there was some dynamite and also machine guns, I told Harmon about it. I was never arrested by the ATF or anything, I was never paid by them; I was never done anything by them. I just told about weapons, I think on two occasions.

Mr. ANDERSON. Well, if Mr. Harmon were to come forward and testify that the information you provided him between the start of your relationship in 1981 had half made his career, should this committee believe him?

Mr. DREDGE. Well, if in fact that was true, and I believe he was with them for some 20-odd years, then he had a pretty easy life the first 10 years he was on the ATF.

Mr. ANDERSON. Well, if he told the committee that you provided him with information that went beyond these two transactions, should the committee believe him?

Mr. DREDGE. Yes, I believe so. I think the only time I ever told him anything was about weapons.

Mr. **Anderson**. If there was a series of cooperation agreements going from year to year in the ATF files that were put through, should the committee believe those records?

Mr. **Dredge**. By me?

Mr. **Anderson**. No.

Mr. **Dredge**. Signed by me?

Mr. **Anderson**. No, sir. I'm just saying if the ATF reflects that you were an informant throughout that period, should they accept that?

Mr. **Dredge**. If I knew specifically what you was talking about, then I would tell you a yes or a no, unequivocally. Inasmuch as I don't know, and I don't know what Jim Harmon may have put in anything, because I've never seen anything, if you would let me see those, perhaps I can help you. But I'm not going to blanketly tell you that anything that Jim Harmon may have put in, whatever he put in is gospel.

The only thing that I can tell you about any agents of anything that I've seen, these 302's, is the ones from Jim Murphy—I mean Bill Murphy, that he put in and that I've seen, I can say to you that I believe those to be true.

Now, if you want to show me some from Jim Harmon and let me reflect upon them, I'll be more than glad to answer your question, but I'm not going to give you a blank check and tell you that everything that Jim Harmon said is gospel.

Mr. **Anderson**. I can understand that and I would do that, except there are some field transcripts which I am still going to ask the committee to produce that was collected from Mr. Harmon, so I'm not quite sure. I know some of what's there, but not all of it, so I guess we will both have to wait until Mr. Harmon is called.

Now, during the period between 1974 and 1980, you were in fact operating a fencing business out of your antique store, weren't you, sir?

Mr. **Dredge**. No, sir.

Mr. **Anderson**. Did you sell a nine-carat Canadian emerald to Peter Baraban?

Mr. **Dredge**. Did I sell him a nine-carat—I may well have sold him a nine-carat diamond.

Mr. **Anderson**. And did you sell him, that you recall, some Tiffany lamps?

Mr. **Dredge**. I don't think Peter ever bought a Tiffany lamp from me.

Mr. **Anderson**. And did you make an occasional——

Mr. **Dredge**. I sold him an 86-pound sterling silver 99. fine mountain goat.

Mr. **Anderson**. Well, did you also sell him, I think it was a 24-carat set of gold silverware?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And were those goods that you, in fact, were fencing, sir, or not?

Mr. **Dredge**. No.

Mr. **Anderson**. No. So, throughout this period, you were simply running a lawful antique?

Mr. **Dredge**. True.

Mr. ANDERSON. And if Mr. Doar and the Investigating Committee concluded to the contrary, they are just flat-out wrong?

Mr. DREDGE. If we are going to stick—this is the first I've heard about Peter Baraban with the diamond or the silverware that he bought from me—if we could stick with that for a minute, Peter Baraban was an attorney in Florida, and I know Peter rather well.

There are people that want to buy things and they would like to buy things, what they think is cheap or below market price, and there are those people that will buy things and they say, well, is it hot. Well, I wouldn't say yes or no—Peter happened to be one of them, by the way—and I wouldn't say yes or no, but I would say, "Well, if you were ever in Perth-Amboy, New Jersey, I wouldn't wear it." Now, I didn't tell him that it was hot, but I told him if he was ever in Perth-Amboy, New Jersey, not to wear it, so he may have assumed that it's hot. That's his problem, not mine. I can assure you they were legitimate goods.

Mr. ANDERSON. And to repeat my question, if Mr. John Doar and the Investigating Committee concluded otherwise on the basis of the evidence, they were just flat-out wrong?

Mr. DREDGE. Well, if we would to specifics and tell me specifically why Doar is wrong about something—I never talked to Doar about any Tiffany lamps.

Mr. ANDERSON. It is your statement under oath today that you engaged in no fencing transactions between 1974 and 1980. Is that correct, sir?

Mr. DREDGE. I never knowingly, knowingly bought anything that I knew was stolen.

Mr. ANDERSON. Well, on your trips to Europe, did you ever take anything out of a church?

Mr. DREDGE. Out of a church?

Mr. ANDERSON. Yes, an artifact or something that you later sold?

Mr. DREDGE. No, sir, or not even out of a house.

Mr. Anderson. Again, to the extent that Mr. Doar and others concluded that you were a burglar as well as a fence, they were wrong on that also?

Mr. DREDGE. I don't know where he got his information from——

Mr. ANDERSON [continuing]. Would know whether William Dredge was a burglar—it is your testimony before the Senate today that you——

Mr. DREDGE. But you are asking me to answer for Mr. Doar, and I can't do that. I can only answer for me.

Mr. ANDERSON. Answer for Bill Dredge.

Mr. DREDGE. No.

Mr. ANDERSON. And because of the—I suppose because you weren't doing anything wrong throughout this period, from 1974 through 1983, you were never arrested, is that correct, or at least nothing beyond a traffic ticket or something that the FBI wouldn't know about?

Mr. DREDGE. Well, I'm not sure about the time frame. I'm not going to say that I wasn't arrested, because I very easily could have been.

Mr. ANDERSON. But it would not have been for fencing or for burglary or anything major?

Mr. DREDGE. I don't—no, no——

Mr. **Anderson**. You would remember that, wouldn't you?

Mr. **Dredge**. No, I was arrested—no, I wasn't arrested. The police and the FBI came to my house and I had a lot of jewelry and boxes of things, and they took from me and put identification tags on them, on little boxes, and carried them away because they had been told that I burglarized or heisted on Arthur Godfrey Road, and they thought that this jewelry was part or parcel of that robbery.

The guy that owned the store, I knew. They subsequently returned everything to me, because it was in fact not part of that. I don't know if I was arrested then or not, but I wanted to tell you about that because that's in that time period. If I was arrested any other time—I could have been arrested, I don't know.

I was suspected of a lot of things.

Mr. **Anderson**. Well, one of the things that you were suspected of in that time period was tax evasion, wasn't it?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And there was a count in Switzerland who came over and swore that he lent you money which was the source of your funds there, wasn't it?

Mr. **Dredge**. No, sir.

Mr. **Anderson**. That didn't happen?

Mr. **Dredge**. No, sir. The man was from Venezuela, Caracas, Venezuela.

Mr. **Anderson**. I stand corrected.

Now, where is Peter Baraban today, if you know?

Mr. **Dredge**. Peter Baraban got convicted of income tax problems, and he went to jail, and I believe that he is on the street. Where he is at, I don't know. Did I try to contact Peter lately? I will tell you that I did because I have a Tiffany lamp now I'd like to sell him.

Mr. **Anderson**. Well, do you recall back at the time in the Seventies—you said Mr. Baraban was a lawyer—did he have any lawyer partners?

Mr. **Dredge**. Yes, he did. Well, I don't know whether they were partners. I think they might have been business associates because they was in the same building. I believe that it was Peter's building, but I am not certain about that. It just seems to me it was Peter's building.

Mr. **Anderson**. One of the lawyers in that building was a lawyer named William Moran, correct?

Mr. **Dredge**. William Moran, right.

Mr. **Anderson**. And William Moran had represented you, hadn't he?

Mr. **Dredge**. Yes, he had—successfully.

Mr. **Anderson**. Successfully. He was a good lawyer, and you believed him to be a good lawyer.

Mr. **Dredge**. I think he's a nice guy.

Mr. **Anderson**. He still is a good lawyer, isn't he?

Mr. **Dredge**. I don't know.

Mr. **Anderson**. But when we are getting into the early Eighties, he was a lawyer who had represented you successfully and, you thought, a good lawyer.

Mr. **Dredge**. And his partner was a partner—a fellow by the name of George Gold.

Mr. **Anderson**. Yes. And on May 10th when you were arrested, at that time I believe you testified you thought your drug case was going to be a Miami case.

Mr. **Dredge**. Yes.

Mr. **Anderson**. Can you tell this committee why, since you had a good lawyer who had successfully represented you in Miami, you called William Borders in Washington and asked him to select a Miami lawyer to come bail you out?

Mr. **Dredge**. Because I got a guy over here that's got a lot of clout. I've got Bill Moran over here who is defending cases. If you can't see why, then I'll never be able to draw you the picture. Here's a guy that has some input with judges. He has been given a job by the President of the United States. Nobody gave Bill Moran a job. This guy has got some clout somewhere, at least I believe that he has. Hence, Bill Borders.

Mr. **Anderson**. All right. Now, in connection with your indictment in 1981, there was an allegation that—I won't quibble with words—you had sold something approaching 40,000 methaqualone, or commonly known, I guess, as quaaludes, to some people for transportation and resale in Maryland, was there not?

Mr. **Spaeder**. May I have the indulgence, Mr. Chairman?

The **Chairman**. The witness can confer with his attorney?

Mr. **Dredge**. Thank you.

[Pause.]

Mr. **Dredge**. I believe it was forty-seven hundred, not thousand—four thousand seven hundred.

Mr. **Anderson**. All right. Four thousand seven hundred.

Well, the indictment itself has come into evidence as House Exhibit 14, and you identified that this morning. Do you recall that, sir?

Mr. **Dredge**. Yes, I recall looking at the first—I have never read that, by the way, except the first page.

Mr. **Anderson**. But you did identify it, did you not?

Mr. **Dredge**. I think then I said that I hadn't seen it. I was aware of it May the 10th.

Mr. **Anderson**. You were aware of it. And were you later made aware that it had eight separate counts?

Mr. **Dredge**. No, I really don't believe that I ever knew what the counts were.

Mr. **Anderson**.-Well, were you aware that they were judges that in all probability would result, if you were convicted, in a minimum term of incarceration of 10 years?

Mr. **Dredge**. I don't know anything about what the penalty carried. I only know that I had a problem, and I pled guilty to a conspiracy that I was guilty of, and that's what I did.

Mr. **Anderson**. Well, in the conspiracy you pled guilty of—well, let me show you what I have marked as Respondent's Exhibit Number 5—let me show it to opposing counsel first, and then I'll show it to you.

[Pause.]

Mr. **Anderson**. Mr. Dredge, I show you what has been marked as Respondent's Exhibit Number 5 for identification and ask if you recognize that document.

[Pause.]

Mr. **Anderson**. I certainly don't want to cut the witness. I would like you to review this document thoroughly. But since I have not had the opportunity to review documents before this, I would ask that document review time taken in the presence of the Senate be excluded from the time consumed in our case.

If you recall, the witness testified he did have 18 hours with Mr. Baron to prepare. That amenity was not made available.

The **Chairman**. I do believe you had the opportunity to sit in at his deposition and participate in that and ask any questions you would like.

Mr. **Anderson**. I agree quite completely, but I believe his testimony was that after that deposition, and indeed the explanation for the improvement in his recollection between June 21 and today, was that he spent an additional 18 hours with Mr. Baron. I had him for—and I could have remained for the two-and-a-half hours that deposition went on. But he has also told us that when Mr. Doar tried to refresh his recollection with documents, under those conditions, it didn't work. And he had the 18 hours. I would ask that the time be excluded.

The **Chairman**. We will continue to keep track of your time as it is being accumulated here. I don't see any reason to take bits and pieces of this testimony and not count it as part of the regular trial, since it clearly is.

Mr. **Anderson**. You have had a chance now to review that document, haven't you, sir?

Mr. **Dredge**. Yes, I did.

Mr. **Anderson**. And directing your attention to the last page, did the original of that document bear your signature?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And that document today, apart from the fact it has been reduced to fit comfortably in volumes, is a true and accurate copy of a statement you signed on or about September 10th or 11th?

Mr. **Dredge**. It is what I did sign and that I agreed to.

Mr. **Anderson**. Yes. And that is a statement of facts you made that you admitted in connection with your plea to one count of the eight-count indictment that had been filed against you in Maryland, is it not?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And that was all part of your bargain by which you hope to avoid jail time in exchange for the information you have provided about Judge Hastings; is that correct, sir?

Mr. **Dredge**. True.

Mr. **Anderson**. Now, I don't want to push you on the arithmetic too much, but having refreshed your recollection there, in the early part of 1980, that indicates that you were selling drugs to a man named Mr. Corbin in significant installments over a short period of time, doesn't it?

Mr. **Dredge**. Did I sign this? Yes, I did, because that was my agreement. And I signed that agreement because I knew that I was guilty of what had transpired. I have never, and to this day have never, given Corbin methaqualone or anything.

Mr. **Anderson**. You are now telling the committee that the statements—some of the specific statements made in this statement—were false?

Mr. **Dredge**. That's what I agreed to do——

Mr. **Anderson**. No, no, but are the statements in here in fact—it's not what you agreed to. Lots of people have agreed to testify, and they say things. I want to know what the truth is. Are the statements in this thing true?

Mr. **Dredge**. Could I speak with counsel for a moment, please?

The **Chairman**. Certainly, you can confer with your attorney.

Senator **Rudman**. Mr. Chairman, do we have copies of that statement here with our staff—the statement that is being produced to the witness?

The **Chairman**. It has not been offered into evidence to my knowledge, and I don't believe we have copies of it.

Mr. **Anderson**. You do not, Senator, and I apologize for it, but there is going to be a fair amount of cross-examination where I don't know which of the available documents are going to be necessary to either impeach or test the witness' recollection. I'll have to rely on getting copies as those matters arise.

The **Chairman**. The witness can go ahead and respond to the question if he is prepared to.

Mr. **Dredge**. Corbin was involved in the conspiracy. I did not sell directly to Corbin. The only persons that got quaaludes from me was Anglin and I believe his name is Ruggiero or—Nadolski. But those were the same quaaludes, and it may have filtered down to Corbin and filtered down to the others; that's true.

Mr. **Anderson**. Directing your attention to page 2 of your statement, you did say in that statement that "in Florida, Corbin and Anglin met with Dredge, and on February 6th Corbin obtained from Dredge 4,700 quaaludes on consignment;" did you not, sir?

Mr. **Dredge**. Do you mean in this document, here?

Mr. **Anderson**. On page 2, yes, in that document.

Mr. **Dredge**. Yes. I signed it, yes, I did.

Mr. **Anderson**. And it made that assertion, did it not?

Mr. **Dredge**. It says—believe—you can believe whatever you want. I did not know Corbin. Corbin had just got out of prison. He did not get anything from me. He was with Anglin and/or Nadolski, or the both of them. And either Nadolski or Anglin got them, not Corbin—although Corbin was there.

Mr. **Anderson**. Well, you did say in the statement—I'm just trying to be sure—that Corbin did get on February 6, 1980, obtained from Dredge 4,700 quaaludes, did you not?

Mr. **Dredge**. Well, the statement is basically true. And had I known then what I was going to have to do now, I would have been opposed to Corbin's name being in there. If they wanted to put Anglin's name in there, if they wanted to put Nadolski's name in there, it was fine with me. But I didn't have—Monday morning quarterbacking is great, except that it was part of the conspiracy—what can I tell you?

Mr. **Anderson**. Well, but——

Mr. Dredge. You're saying did I specifically give them to Corbin. No, I did not specifically give them to Corbin.

Mr. Anderson. Did you say in this statement that you did specifically give them to Corbin?

Mr. Spaeder. Mr. Chairman, may I simply call the committee's attention to the fact that the Statement of Facts does not acknowledge by the witness that those are in fact true statements, but he acknowledges that those facts would have been adduced by the Government had the case gone to trial—an important distinction because he was admitting to evidence that would be sponsored by the Government which he conceded would establish proof beyond a reasonable doubt, not the fact of the truth of the assertions, and he was quite content to plead guilty on that basis. The preamble to the Statement of Facts makes that very clear.

The **Chairman.** Let me just ask Mr. Anderson where all this line of questioning is going. It seems quite lengthy. Is it going to continue a substantial additional period? Is there some——

Mr. Anderson. Oh, I think we'll be out within the hour, but it will continue for a period. But let me tell the Chair and the committee precisely where this line is going. You have this person who purportedly made some statements that you may see to Agent Murphy coming through in 302s and telexes. You have him—which I shall offer in evidence at the conclusion of this testimony—giving two days of transcribed testimony before a committee of five judges under examination by Mr. Doar, with an opportunity to review records. You there get version two. You have him appearing before Mr. Specter in deposition with a vastly improved recollection, five years after his prior testimony and some eight years after the event. And you have him here today with a much-enhanced thing—I mean, if we delayed this another week, his recollection would be perfect.

I hope that by prior inconsistent statements, I may lay a predicate that will satisfy the committee and ultimately the Senate that this is a fence, a burglar, a drug dealer, who would lie for any purpose on any occasion if it will serve the interests of William Dredge.

The fact that he signed a Statement of Facts, presented it to Judge Kaufman as the basis, there may be subtle distinctions as to preambles and negotiated statements, but it says flat out Corbin obtained 6,000 quaaludes from Dredge. Dredge's signature appears at the bottom, and we are now learning that even then he couldn't quite get it straight.

The point of this very tedious cross-examination is to try and create a record which, when they read it, for those who don't see it, may persuade a few Senators that he didn't get it straight now, either, and this is not evidence to be trusted.

That's where I'm going, sir, and I'd like to get there.

The **Chairman.** Well, anything we can do to get you there——

Mr. Anderson. You could rule right now, and I will sit down.

The **Chairman** [continuing]. We would appreciate. We are bearing with counsel in trying to elicit this testimony, but——

Mr. Anderson. It is tedious to me, too, Senator.

The CHAIRMAN [continuing]. It is taking a substantial amount of time, and it is not directly on the points at issue in the case, as I see it.

Mr. ANDERSON. I am sorry, Mr. Chairman. Are you suggesting—and please, I do need to understand this, because I will modify my questions if you are telling me the credibility of William Dredge is not a significant fact of consequence relevant to this case.

The CHAIRMAN. Certainly, certainly, this witness' credibility is an issue. But the indirect way in which you are trying to demonstrate or question it, I think, is taking a great deal of time.

Mr. ANDERSON. Oh, I agree with you on that, but there's a great deal to question, I think.

In any event, Mr. Dredge, you signed this Statement of Facts, did you not?

Mr. DREDGE. Yes.

Mr. ANDERSON. You were advised by counsel when you signed it?

Mr. DREDGE. Yes.

Mr. ANDERSON. You appeared before the honorable Frank Kaufman, a judge?

Mr. DREDGE. Yes.

Mr. ANDERSON. And did Judge Kaufman in those proceedings ask you whether this Statement of Facts was true?

Mr. DREDGE. Yes.

Mr. ANDERSON. And had you taken an oath at that time?

Mr. DREDGE. Yes—would I have taken an oath when Kaufman asked me——

Mr. ANDERSON. Yes.

Mr. DREDGE. I'd like to back up for a second, because I don't know that I did; I don't know that that came about. But this ostensibly is true. I would like to—can I make a statement?

Mr. ANDERSON. I think the Chair's instruction before was to confine it——

Mr. DREDGE. OK, forget it. I'll wait, no problem.

The CHAIRMAN. If the witness wants to make a statement, he is free to make a statement.

Mr. DREDGE. Shortly after Corbin was out on bond—or, he wasn't on bond; I think he had gotten out, he was on the street. I don't know whether he escaped; I don't think so; I think he was let out on parole; I don't know—but he was apprehended and remanded back to jail with this conspiracy thing. He called me from a Federal—I believe it was Federal—from Memphis, Tennessee and asked me if I had any problem making a statement and having it sent to his attorney that he never bought quaaludes from me. And I said I have absolutely no problem at all with it and went down, and I had a sworn statement made to that effect that he had never purchased any quaaludes from me, and sent it on to his attorney.

Maybe that's where he is coming from, trying to ascertain if I in fact sold them to Corbin so that if I lied here, then I must have lied over here when I made this other statement, but I'm sure he must have that. But I would like to beat him to the punch and tell you that I did do it. I sent a sworn affidavit to Corbin's attorney that he never purchased drugs from me because he didn't.

Mr. ANDERSON. I consider myself beaten to the punch.

The CHAIRMAN. Counsel, would you go ahead and proceed?

Mr. **Anderson**. All right, Mr. Dredge, I will take my admonition from the Chair at least in part, and let me submit to you a series of propositions as questions as to how one might view the evidence and get your reaction.

I submit to you, Mr. Dredge, that you never really believed that William Borders had the power to fix cases before Alcee L. Hastings or any other judge. Is that true, sir?

Mr. **Dredge**. No.

Mr. **Anderson**. I submit to you, however, that after you were indicted, you knew you were going to need some fairly powerful medicine to cut a deal with the Government. Is that true, sir?

Mr. **Dredge**. Yes.

Mr. **Anderson**. I submit to you, sir, that on May 18th, you went to a lawyer named Kenny Robinson and offered him $50,000 if he could guarantee the result in the Kaufman case before you. Is that correct, sir?

Mr. **Dredge**. No.

Mr. **Anderson**. I submit to you, sir, that you were trying to fix that case before Mr. Robinson so that you could turn him in and hoped that that would pull a deal. Is that correct, sir?

Mr. **Dredge**. No.

Mr. **Anderson**. I submit, sir, that after that didn't work, you approached Jimmy Harmon, seeing if you could trade the information you had on Mr. Borders and your claim about Judge Hastings in exchange for a deal. Is that correct, sir?

Mr. **Dredge**. No.

Mr. **Anderson**. You never approached Mr. Harmon with this information?

Mr. **Dredge**. I don't believe so.

Mr. **Anderson**. Well, I submit to you——

Mr. **Dredge**. Did we talk about it at some point in time after the May 10th? Quite possibly.

Mr. **Anderson**. And did you enlist his aid to take this information in order to help you get off the Baltimore deal?

Mr. **Dredge**. That's like me going down and getting a traffic cop to do something; no.

Mr. **Anderson**. Well, at the time you went to Mr. Harmon, had he become aware you had been involved in drug dealing activities, also?

Mr. **Dredge**. I don't know.

Mr. **Anderson**. I submit to you, sir, that he rejected your information because he knew that he was like a traffic cop when it came to drug dealing, and that you tried to persuade him that he ought to help you because these blacks were taking over the world. Is that correct, sir?

Mr. **Dredge**. No.

Mr. **Anderson**. I submit to you, sir, that after that rejection, you then went in with the Trafficante information knowing full well that Mr. Borders had no power over Judge Hastings. Is that correct, sir?

Mr. **Dredge**. No.

Mr. **Anderson**. I submit to you after Mr. Robinson and Mr. Harmon, you knew, sir, that giving them a lawyer, even a significant one in Washington, would not be enough to do a deal; Bill Borders would not get you out of a drug case. Is that correct, sir?

Mr. **Dredge**. No.

Mr. **Anderson**. I submit to you, sir, you knew that it had to include the big fish, the Federal judge. Is that correct, sir?

Mr. **Dredge**. No.

Mr. **Anderson**. I submit to you that from that point on, as you concede, from July 20th it was in your best interest to see this deal go down correctly, for Bill Dredge's deal. Is that correct, sir?

Mr. **Dredge**. Yes.

Mr. **Anderson**. I submit to you that after serious bargaining, you entered into a plea agreement with the Government which was designed to totally conceal your role and involvement in this case as one of the conditions of that deal. Is that true, sir?

Mr. **Dredge**. No.

Mr. **Anderson**. Under that agreement, sir, the Government agreed it wouldn't call you as a witness, didn't it, sir?

Mr. **Dredge**. Yes.

Mr. **Anderson**. Under that agreement, the Government agreed they wouldn't tape or transcribe your telephone conversations; isn't that correct, sir?

Mr. **Dredge**. No. Nobody ever told me that.

Mr. **Anderson**. May I approach counsel?

The **Chairman**. Yes.

[Pause.]

Mr. **Dredge**. Wait a minute, Mr. Anderson. Getting back to your last thing, are you talking about my telephone being taped, or me personally being taped?

Mr. **Anderson**. Well, let's take it a piece at a time. You personally being taped.

Mr. **Dredge**. I refused to be taped.

Mr. **Anderson**. And they agreed to that condition on your part?

Mr. **Dredge**. Right.

Mr. **Anderson**. And they also agreed that you would never be called before a grand jury?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And agreed that you would never be called to trial?

Mr. **Dredge**. The agreement I had was with the entire Federal Government as far as I am concerned, including this body, that I should never be anywhere.

Mr. **Anderson**. And had your version of the agreement been honored, you never would have been anywhere, would you?

Mr. **Dredge**. That's exactly right.

Mr. **Anderson**. And that man would still be looking for your testimony.

Mr. **Dredge**. They started it, not me.

Mr. **Anderson**. That, sir, is open to dispute, because I submit that even after September 11th you had a continuing William Dredge interest in how this deal went down; isn't that correct, sir?

Mr. **Dredge**. No. My agreement was—can I enlarge, please—my agreement was to——

Mr. **Anderson**. Could I ask the Chair again to let me finish this line, and Mr. Baron can have him enlarge all he wants.

The **CHAIRMAN**. I thought counsel asked a question of the witness.

Mr. **DREDGE**. I thought he did, too.

Mr. **ANDERSON**. I asked him was it in William Dredge's interest that this deal go down after September 10th when he made his deal. That seemed to me like a yes or no question.

The **CHAIRMAN**. Well, I think the witness will be allowed to answer the question, and if he wants to explain his answer, he can do that.

Mr. **DREDGE**. My agreement was to introduce an undercover agent posing as a Romano to William Borders, closed case, that was the end of it. My agreement was—that's all. Now, if it didn't work out, for any reasons, if anything happened, that was no responsibility of mine, had nothing to do with me, because I had conducted and done everything that I agreed to do. So if they hadn't went further, if Borders had backed off, if the undercover guy had dropped dead, it would have meant absolutely nothing to me because my deal was done.

Mr. **ANDERSON**. And your deal that was done, sir, was that the Government would accept your plea of guilty, that the Government would make no recommendation as to sentencing, but the Government would provide a full report to the court of the extent and scope of your cooperation under that agreement. Is that correct, sir?

Mr. **DREDGE**. Basically, yes, that's true.

Mr. **ANDERSON**. And so Judge Kaufman's decision on your sentencing would depend upon the scope and extent of your cooperation under that agreement, would it not, sir?

[Pause.]

Mr. **DREDGE**. That's true, but my cooperation was extremely limited to the meeting.

Mr. **ANDERSON**. Well, Mr. Dredge, I submit to you that you in fact remained active with William Murphy in this transaction. Is that correct, sir?

Mr. **DREDGE**. Only to the extent I agreed any further communications I had with Borders that I would tell him about it.

Mr. **ANDERSON**. I submit to you that either he or Mr. Rico kept you apprised of developments so you would be able to respond to Mr. Borders if you had inquiries; is that correct?

Mr. **DREDGE**. Who is Mr. Rico?

Mr. **ANDERSON**. The person who was playing Mr. Romano.

Mr. **DREDGE**. OK. No, I had no communication at all with Rico.

Mr. **ANDERSON**. Did Mr. Murphy keep you apprised of developments so you could intelligently respond to Mr. Borders?

Mr. **DREDGE**. No, he didn't keep me apprised of anything.

Mr. **ANDERSON**. Did he tell you that the deal you had worked out in advance about the judge having dinner at a hotel had been made, and that the judge was supposed to have dinner at the Fontainebleau on September 16th?

Mr. **DREDGE**. No, I don't believe so.

Mr. **ANDERSON**. Did you know that Mr. Borders was scheduled to be in Las Vegas at Caesar's Palace on September 16th, watching a fight?

Mr. **DREDGE**. Yes, I believe I did.

Mr. **Anderson**. Why, sir, then, did you call Caesar's Palace on September 16, 1981? Wasn't that to set up a pay phone system so that you could tell Mr. Borders that Judge Hastings had had dinner at the hotel?

Mr. **Dredge**. I don't know that I ever called Las Vegas.

Mr. **Anderson**. But if your telephone records show it, that might be the one error you wondered about before, might not it, sir?

Mr. **Dredge**. No, I really didn't wonder about anything.

Mr. **Anderson**. Now, Mr. Dredge, when this committee hears, as I believe it will, the recording between the initial meeting between Mr. Rico Romano—if you will give me the man playing Frank Romano—and Mr. Borders, it will sound almost like code. Both men had been briefed. You briefed Mr. Rico through Agent Murphy on what you had told Mr. Borders the deal would be, didn't you? You told him how to handle himself, what the deal that you had been working on was, didn't you, sir?

Mr. **Dredge**. No, I didn't tell Rico anything.

Mr. **Anderson**. Did you tell Mr. Murphy that? Did you tell him the price was $150,000?

Mr. **Dredge**. Yes.

Mr. **Anderson**. Did you tell him that Borders would agree to have Judge Hastings have dinner someplace?

Mr. **Dredge**. No. I only told him that I thought that he would.

Mr. **Anderson**. Did you tell him that one part of the deal would be some substantial return of property?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And that thereafter there would be a mitigation of sentence motion?

Mr. **Dredge**. The final—the bottom line was that they wasn't going to the can—to jail.

Mr. **Anderson**. And that is the deal that you had worked out preliminarily with Mr. Borders, isn't it?

Mr. **Dredge**. I didn't work anything out with Mr. Borders. He's the one that's giving me the information. I'm not in the position to go to Hastings; he is, not me.

Mr. **Anderson**. But you were telling Mr. Borders you were going back to the Romanos, weren't you?

Mr. **Dredge**. Absolutely.

Mr. **Anderson**. And you were reporting to him the Romanos' response, weren't you—you were reporting to him what you said was the Romanos' response.

Mr. **Dredge**. Right.

Mr. **Anderson**. And you were the one who knew what Mr. Borders thought the deal was and what you had told him the Romanos thought the deal was prior to September 10th, weren't you?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And that's the deal that went down, wasn't it?

Mr. **Dredge**. I don't know. I wasn't party to that.

Mr. **Anderson**. And when you were overheard on those few snippets of transcripts, on the body recorders and otherwise, telling Borders to make a call to her, who was it? Who was "her"?

Mr. **Dredge**. I think you've lost me.

Mr. **Anderson**. Perhaps. I submit to you that Joe Nesline knew figures in organized crime in Miami, did he not?

Mr. **Dredge**. I believe so.

Mr. **Anderson**. He knew Santos Trafficante, who was the boss.

Mr. **Dredge**. I believe so.

Mr. **Anderson**. He knew Trafficante, who had run gambling in Cuba, did he not?

Mr. **Dredge**. I believe so.

Mr. **Anderson**. He knew the Cellinis, did he not?

Mr. **Dredge**. I believe so.

Mr. **Anderson**. He would have known the Romanos, or he could have found out about them himself, couldn't he have?

Mr. **Dredge**. If he had wanted to get involved, yes, I'd say he could have.

Mr. **Anderson**. But it was he who asked you to come up to his apartment for that first meeting, wasn't it?

Mr. **Dredge**. The first one when Borders was there, no, he didn't ask me there.

Mr. **Anderson**. You don't ever recall testifying that you came up from Miami on the invitation of Joe Nesline for that?

Mr. **Dredge**. For that meeting—I don't think that I went to the first meeting, where I met Borders at Joe's apartment on Joe's invitation.

Mr. **Anderson**. You just showed up from Miami—"popped in", as we say. I'll accept that. But Mr. Borders was there.

Mr. **Dredge**. Yes.

Mr. **Anderson**. And he at that time knew Mr. Nesline, didn't he?

Mr. **Dredge**. I don't know how long they had known one another or if he in fact did. I believe that Borders was there with Shorter.

Mr. **Anderson**. All right. But he was in the house at that time, playing poker, wasn't he?

Mr. **Dredge**. No, he wasn't. Joe Nesline and John Shorter were playing gin rummy.

Mr. **Anderson**. I submit to you, sir, that it is Mr. Nesline who brought you in as the bag man for this deal; is that correct?

Mr. **Dredge**. No.

Mr. **Anderson**. I submit to you, sir, that when you figured out that Borders had no power over Judge Hastings, you decided to terminate the deal in a way that favored William Dredge. Is that correct?

Mr. **Dredge**. No.

Mr. **Anderson**. And I submit to you, sir, that you did exactly that and manipulated it up until and including October 7, 1981. Is that correct?

Mr. **Dredge**. No.

Mr. **Anderson**. I have no further questions of this witness, Mr. Chairman.

The **Chairman**. Is there redirect examination?

Mr. **Baron**. Yes, there is, Mr. Chairman.

Mr. **Anderson**. One additional point, Mr. Chairman. Could I move Respondent's Exhibits 2, 3, 4 and 5 into evidence?

The **Chairman**. Is there any objection to those exhibits being introduced?

Mr. **Baron**. Since we were not furnished copies, I'd have to refresh my recollection as to what they were—2 and 3, I believe, were transcripts from the IC?

Mr. **Anderson**. That is correct.

Mr. **Baron**. No objection to those. What were the others?

Mr. **Anderson**. Four was the deposition taken before Senator Specter, the transcript of that.

Mr. **Baron**. No objection.

Mr. **Anderson**. Five is the Statement of Facts that Mr. Dredge signed.

Mr. **Baron**. No objection.

The **Chairman**. They will all be admitted. Let me just question counsel before we finally decide on the admission of these exhibits. What are they being offered for?

Mr. **Anderson**. All three of the transcripts are, I think, prior inconsistent statements. Once there is an accusation that a witness' story is one of recent fabrication, a prior inconsistent statement can come in either for impeachment or as substantive evidence of the truth of the matter asserted.

I believe I have made—whether it has been understood or not—a charge of recent fabrication. I believe this evidence is admission both as substantive evidence of the truth of the matter asserted and impeachment evidence that this witness has never been able to tell the same story straight on any given occasion.

That, sir, is 2, 3, and 4.

The **Chairman**. Two, 3, and 4, could I just ask counsel, the portions that were referred to by counsel and the witness had his attention directed to them, I can see the argument for admission of those. I don't know that I can see the argument for admitting the entire transcript on that same theory.

Mr. **Anderson**. Mr. Chairman, if I might turn that back, we can either stay here another couple of hours, and I'll get every piece of that transcript and whack it, and show you the argument why it all goes in, or I can take the admonition of the Chair that the committee is getting a little weary of my record-by-record and page-by-page recitation of the events and where the conflicts are. I am prepared to do it either way. I will represent to you that those who have looked at those transcripts will have a hard time saying that any two of them are not in conflict with the others.

I think the Senate is entitled to know the story as this man told it on May 22nd and 23rd under John Doar's questioning, the story as he told it for a little while under mine and later under Mr. Baron's on June 21, and the story as he told it today, and to wonder how this recollection had such a miraculous route.

I think it is both substantive—I consider his whole statements recent fabrication or continuing fabrications as he learns new events to fit within the story. I think those are admitted as substantive evidence and as prior inconsistent statements.

The **Chairman**. There has been no objection posed to the introduction of the exhibits, so we'll admit them.

[The documents were marked Respondent's Exhibit Nos. 2, 3, and 4 and were received in evidence.]

Mr. **Anderson**. With respect to Respondent's 5, that is a statement that not only is offered for impeachment, but is a part of a plea of guilty to a felony committed within 10 years of even this date. It also is admissible as bearing upon his credibility as well as to the substance of the matters there.

The **CHAIRMAN**. There is no objection to it, so it will be admitted as well.

Mr. **ANDERSON**. Thank you, Mr. Chairman.

[The document referred to was marked Respondent's Exhibit No. 5 and was received in evidence.]

Mr. **BARON**. May I proceed, Mr. Chairman?

The **CHAIRMAN**. Yes, please.

REDIRECT EXAMINATION

Mr. **BARON**. Mr. Dredge, when you appeared before the Investigating Committee back in 1985, did you have counsel?

Mr. **DREDGE**. No.

Mr. **BARON**. Had you reviewed any documents before you walked into the room?

Mr. **DREDGE**. No.

Mr. **BARON**. When you were shown documents, were they shown to you as you were sitting there for the first time?

Mr. **DREDGE**. Yes.

Mr. **BARON**. In the course of your testimony before the Investigating Committee, did you tell them about the essential aspects of the Trafficante bribe scheme?

Mr. **DREDGE**. Yes.

Mr. **BARON**. In the course of your testimony before the Investigating Committee, did you tell them about the essential aspects—I'm sorry—did I say Trafficante bribe scheme?

Mr. **DREDGE**. Yes, you said Trafficante bribe scheme.

Mr. **BARON**. The Romano bribe scheme.

Mr. **DREDGE**. Yes.

Mr. **BARON**. You testified in response to questioning that you over the years have heard people claim that they had influence with Federal judges.

Mr. **DREDGE**. True.

Mr. **BARON**. And that you discounted that, you didn't believe it.

Mr. **DREDGE**. No.

Mr. **BARON**. Did any of these people ever demonstrate that in fact they influenced such judges?

Mr. **DREDGE**. No.

Mr. **BARON**. Did any of them have a judge promise that a judge would issue an order and then have the judge issue an order?

Mr. **DREDGE**. No.

Mr. **BARON**. Did any of them ever say that a judge would postpone a sentencing and then the sentencing would be postponed?

Mr. **DREDGE**. No.

Mr. **BARON**. Did any of them ever say that a judge would appear at a given time and place, and then the judge would appear at a given time and place?

Mr. **DREDGE**. No.

Mr. **BARON**. In the course of your questioning by Mr. Anderson, he suggested to you that the records show that the first time that you had any contact with Mr. Borders was sometime—I believe it was sometime around the end of May, or middle or end of May—do you recall that?

Mr. **DREDGE**. I said in May sometime.

Mr. **Baron**. OK. Mr. Dredge, I want to show you a document which has been marked Exhibit 67-A by the House. I want to direct your attention to the bottom right-hand page of what is represented there. There is a telephone number there: 305-945——

Mr. **Dredge**. 9939.

Mr. **Baron** [continuing]. 9939. Do you recognize that number?

Mr. **Dredge**. That's my phone number.

Mr. **Anderson**. Your Honor, this is not a document in evidence he has been examining on. I will proffer it is my understanding there is no claim that this witness authored this document, there is no claim he ever saw it before. It is one of the documents as to which I have submitted an authenticity and genuineness dispute. I think it is improper to use it to—I mean, I will stipulate that Mr. Dredge can read anything Mr. Baron puts in front of him—I submit it is grossly improper to have him read another person's document into the record when he knows that that is going to be challenged evidence.

Mr. **Baron**. I just asked him whether that was his phone number.

Mr. **Dredge**. Yes, it is my phone number.

Mr. **Anderson**. This is not in evidence, and therefore there is nothing in evidence for him to tell you whether it is his phone number or not. When it comes in evidence, the committee can read it too. This is improper.

The **Chairman**. Does counsel intend to offer this exhibit into evidence?

Mr. **Baron**. Senator, I do intend to offer it subject to the foundation being laid for exactly what it is. I am prepared to proffer what it is but that will come through a witness later on. I don't want to have to bring Mr. Dredge back here to try to bring in the fact that that is his telephone number that appears on that page.

Mr. **Anderson**. May I respond?

Mr. **Baron**. Let me finish, please.

Mr. **Anderson**. Certainly.

Mr. **Baron**. I will proffer to the committee that Agent Murphy will testify precisely what that document is, where it came from, how he obtained it. A full foundation will be laid for exactly what it is.

I am asking Mr. Dredge simply to identify a telephone number that he can read as well as anyone else. It has nothing really to do with the document itself. It is what is written there in somebody's handwriting whether that's his phone number.

Mr. **Anderson**. Mr. Chairman, may I respond now?

The **Chairman**. Yes.

Mr. **Anderson**. The committee has received—I unfortunately do this orally—the committee has received voluminous telephone records that Mr. Dredge has identified as being his telephone number. I take it it is not beyond the capacity of the Senators to read the piece of paper and compare the number with whatever is in evidence already.

I think this is an improper effort to "back-door" a piece of evidence that I intend to object most strenuously to when it comes in at the wrong time. I think it is unnecessary unless it is a new number on which we have no telephone records. If it is an old number, you've already got it in your book, the telephone records. If this gets into your book, in closing argument, they can tell you what number it was.

The **Chairman**. Would counsel confine his questions to questioning the witness about what his telephone numbers were. Can you do that? I don't think it is—I agree that the objection is sustained to the extent that it is objecting to you examining this witness on an exhibit that has not been introduced into evidence.

So if you would examine the witness any way you want about this telephone numbers, but I don't think it is proper for you to use this exhibit as a vehicle to do that.

Mr. **Baron**. I'm not going to ask Mr. Dredge to authenticate the document. Let me make that clear. I just want him to verify that that is his telephone number that appears on that piece of paper.

Mr. **Anderson**. I object.

The **Chairman**. Why don't you just have him verify what his telephone number is?

Mr. **Anderson**. And could I ask that the exhibit be withdrawn from the witness, please?

Mr. **Baron**. Mr. Dredge, the number 305-945-9939, is that your telephone number?

Mr. **Dredge**. That was one of my telephone numbers back in 1981.

Mr. **Baron**. And was that your telephone number in April 1981?

Mr. **Dredge**. Yes.

Mr. **Baron**. And were you known as "Billy" in those days?

Mr. **Dredge**. Yes, and still.

Mr. **Baron**. And did Mr. Borders know you as "Billy" in those days?

Mr. **Dredge**. Yes.

Mr. **Baron**. In your early dealing with Mr. Borders back at the time when you, as you put it, were either dubious or thought he was blowing smoke about the issue of whether he could influence a Federal judge, even though you thought that Mr. Borders might not have the power he claimed, what did you understand that he was claiming he could do?

Mr. **Anderson**. Objection. What did he understand—I'll withdraw the objection. Go ahead.

Mr. **Baron**. What did you understand Mr. Borders was claiming he could do?

Mr. **Dredge**. My understanding was Mr. Borders had an avenue to Judge Alcee Hastings and that Hastings would perform certain performances for him, or certain actions.

Mr. **Baron**. Did Mr. Borders ever call you at home and ask you to go to a pay phone?

Mr. **Dredge**. Many times.

Mr. **Baron**. Do you know when he placed that call whether he was calling from either his office or his home, or whether he was placing the call from a pay phone?

Mr. **Dredge**. I have no way of knowing.

Mr. **Baron**. Conversely, did you have occasion to call Mr. Borders either at his office or at his home to go to a pay phone?

Mr. **Dredge**. Did I ever——

Mr. **Baron**. Did you ever have occasion to call Mr. Borders and ask him to go to a pay phone?

Mr. **Dredge**. Yes, yes.

Mr. **Baron**. And you would place that call either to his home or to his office?

Mr. **Dredge**. Or to his girlfriend's.

Mr. **Baron**. Or to his girlfriend's. And when you placed that call, was that placed on occasion from a pay phone by you?

Mr. **Dredge**. Yes.

Mr. **Baron**. Was it sometimes placed from your home?

Mr. **Dredge**. Sometimes it would be from my home; sometimes it would be from the store. Most times, it would be from a pay phone.

Mr. **Baron**. Did you have any role in Judge Hastings' showing up at the Fontainebleau on September 16, 1981?

Mr. **Dredge**. None whatsoever.

Mr. **Baron**. Did you have any role with regard to Judge Hastings' decision to flee Washington on October 9, 1981?

Mr. **Dredge**. None whatsoever.

Mr. **Baron**. Did you have any role with regard to Judge Hastings issuing an order in the *Romano* case on October 6, 1981?

Mr. **Dredge**. None whatsoever.

Mr. **Baron**. Do you know whether Mr. Nesline attended the Leonard-Hearns fight in Vegas on September 16, 1981?

Mr. **Dredge**. I believe that he did.

Mr. **Baron**. And I believe you testified earlier that your reason for coming up to Mr. Nesline's apartment when you met Mr. Borders was to get back some money that you had loaned to Mr. Nesline; is that correct?

Mr. **Dredge**. Yes.

Mr. **Baron**. Did Mr. Nesline know you were coming?

Mr. **Dredge**. I'm not sure whether he did or not.

Mr. **Baron**. And with all of the—whatever problems you've had with the law, does the Department of Justice or any governmental body have anything hanging over you at this time?

Mr. **Dredge**. No, sir.

Mr. **Baron**. Thank you.

I have no further questions.

The **Chairman**. Is there recross-examination?

Mr. **Anderson**. No, Mr. Chairman.

The **Chairman**. Do any of the Senators have questions? Let me first ask Senator Specter if he has questions.

The **Vice Chairman**. Thank you, Mr. Chairman. I have none.

The **Chairman**. Senator Leahy?

EXAMINATION BY THE COMMITTEE

Senator **Leahy**. Partly on the question just asked, whether they have any hold on you such as probation, I just want to make sure I absolutely understand this.

You are not under probation to any Federal court; is that correct?

Mr. **Dredge**. To any court, Federal and/or State.

Senator **Leahy**. No State court, no local court, no municipal court.

Mr. **Dredge**. Nothing.

Senator **Leahy**. So no such hold there.

Are you being paid by any entity within the Federal Government?

Mr. **Dredge**. Have never been paid.

Senator **Leahy**. State government?

Mr. **Dredge**. With the exception of witness appearance fees.

Senator **Leahy**. I was going to come to that.

Mr. **Dredge**. OK.

Senator **Leahy**. And what did that amount to approximately? Are we talking hundreds of dollars, thousands of dollars?

Mr. **Dredge**. I think $3,000.

Senator **Leahy**. Not over $5,000, in any event?

Mr. **Dredge**. Oh, no.

Senator **Leahy**. Are you in any——

Mr. **Dredge**. Excuse me. I think it was $3,700 or $3,800.

Senator **Leahy**. Are you in any kind of a witness protection program today?

Mr. **Dredge**. No, sir, I have never been.

Senator **Leahy**. Have you ever served any sentence, State or Federal court?

Mr. **Dredge**. In prison?

Senator **Leahy**. Yes.

Mr. **Dredge**. Yes.

Senator **Leahy**. And how long was that?

Mr. **Dredge**. Five years.

Senator **Leahy**. And that was——

Mr. **Dredge**. In 1955.

Senator **Leahy**. And you have no probation or anything else as a result of that?

Mr. **Dredge**. No, sir.

Senator **Leahy**. Any restrictions on you as a result of that?

Mr. **Dredge**. No, sir.

Senator **Leahy**. No restrictions on your ability to hold licenses for any types of jobs, or anything of that nature?

Mr. **Dredge**. No, sir.

Senator **Leahy**. Who brought you up here today?

Mr. **Dredge**. I brought myself—do you mean into this building?

Senator **Leahy**. No—just getting up here. Did anybody pay your way up here today?

Mr. **Dredge**. Yes, I received travel expenses for this——

Senator **Leahy**. From here.

Mr. **Dredge** [continuing]. This hearing, yes.

Senator **Leahy**. Were you aided in that by anybody, say, in the FBI?

Mr. **Dredge**. No, sir.

Senator **Leahy**. Do you expect to be aided by them in any way when you leave here?

Mr. **Dredge**. They have not aided me to this point in time.

Senator **Leahy**. And you have never been in a witness protection program?

Mr. **Dredge**. No, sir.

Senator **Leahy**. Any member of your family?

Mr. **Dredge**. No, sir.

Senator **Leahy**. Have you ever asked to be?

Mr. **Dredge**. Have I ever been asked to be?

Senator **Leahy**. No. Have you ever asked to be.

Mr. **Dredge**. Have I ever? No, sir. Was I asked? Yes.

Senator **Leahy**. And when was that?

Mr. **Dredge**. Back in 1981.

Senator **Leahy**. And you declined it.

Mr. **Dredge**. Yes, sir.

Senator **Leahy**. But yet you have expressed fear for your safety in appearing here today; is that correct?

Mr. **Dredge**. And will any time that I have to be with a body of people.

Senator **Leahy**. But you don't have such a fear that you would go into a witness protection program.

Mr. **Dredge**. I think I am my best protection.

Senator **Leahy**. And nothing has been offered you in return for your being here today?

Mr. **Dredge**. Other than travel expenses, no, sir.

Senator **Leahy**. Thank you, Mr. Chairman.

The **Chairman**. Senator Rudman?

Senator **Rudman**. Mr. Dredge, just a few questions.

When you first decided to discuss this matter with the Strike Force lawyers in order to see if you could cut a deal for yourself because of the problem you were facing in Baltimore, who was representing you at that time in the Baltimore matter?

Mr. **Dredge**. Roger Spaeder and Peter Kolker.

Senator **Rudman**. Did you advise them prior to visiting the Strike Force that you were going to do that?

Mr. **Dredge**. No, sir.

Senator **Rudman**. Did you advise them at some subsequent time that you had done that?

Mr. **Dredge**. The day that we was doing it in Baltimore, and I certainly should have advised and asked his advice long before that.

Senator **Rudman**. Why didn't you, if I might ask, advise them at the time since they were your counsel?

Mr. **Dredge**. Not having too much trust in too many people, and I didn't want—the closer-knit that I could keep what I was doing, the better I felt.

Senator **Rudman**. Now, you responded to Senator Leahy that you had served five years in 1955——

Mr. **Dredge**. I had a five-year sentence.

Senator **Rudman**. How long of that did you serve?

Mr. **Dredge**. Probably four years.

Senator **Rudman**. Where was that served?

Mr. **Dredge**. Federal Penitentiary in Atlanta.

Senator **Rudman**. And what was the charge that you were convicted on?

Mr. **Dredge**. It was a—I really don't remember what the exact charge was, but it had to do with checks.

Senator **Rudman**. Well, expand on that. If you can't name the charge—it had to do with checks—kiting checks——

Mr. **Dredge**. It was a check—false checks here in Washington, DC, and payroll checks that I had manufactured.

Senator **Rudman**. So these were false checks you had manufactured and then had cashed?

Mr. **Dredge**. Yes, sir.

Senator **Rudman**. And how much money was involved in that transaction for which you served time—approximately, to the best of your recollection, 20 years later, 30 years later?

Mr. **Dredge**. Forty-five——

Senator **Rudman**. What year did that take place?

Mr. **Dredge**. It took place in 1953, I suppose.

Senator **Rudman**. So that is 39 years ago.

Mr. **Dredge**. Thirty-nine years ago.

Senator **Rudman**. But approximately how much money at that time?

Mr. **Dredge**. Probably four, five, six, seven thousand dollars.

Senator **Rudman**. Now, you testified under cross-examination that you had been arrested many times, but not convicted.

Mr. **Dredge**. I have been arrested, yes, sir.

Senator **Rudman**. How many times have you been arrested?

Mr. **Dredge**. I don't know.

Senator **Rudman**. More than 10?

Mr. **Dredge**. I don't think 10. Probably—do you mean in my entire life?

Senator **Rudman**. Other than as a juvenile, that's correct.

Mr. **Dredge**. Probably six or eight times.

Senator **Rudman**. And for what charges?

Mr. **Dredge**. Armed robbery, acquitted; assault with a dangerous weapon, six months.

Senator **Rudman**. Did you serve time for that?

Mr. **Dredge**. Yes, sir.

Senator **Rudman**. Well, I thought you answered Senator Leahy before that you had served five years, and you did not mention the six months. Did you forget that?

Mr. **Dredge**. I don't know how far you want to go back.

Senator **Rudman**. Well, I guess, Mr. Dredge, what we are trying to do is assess your credibility as a witness, and we have no opinion of that and we will have to form an opinion of that. And if you didn't understand Senator Leahy's question, then I'm going to just expand on it.

So you had assault with a deadly weapon, you were found guilty, you served six months.

Mr. **Dredge**. Yes, sir.

Senator **Rudman**. Where was that?

Mr. **Dredge**. Washington, DC I served the six months—I think I did four months in Occoquan.

Senator **Rudman**. All right. And continue with your arrest record.

Mr. **Dredge**. I can't. I really don't know how many times I have been arrested—well, I haven't seen my record, so I don't know. I have been arrested.

Senator **Rudman**. Well, have there been other violent kinds of crimes—armed robbery, assault with a deadly weapon, anything else of that sort that you were arrested for, either found guilty or acquitted.

[Pause.]

Mr. Dredge. Stolen car, 1946—maybe 1947—in New Jersey. I had just come back from overseas, and I stole an automobile, and I——

Senator Rudman. Were you acquitted or found guilty?

Mr. Dredge. I think they reduced the charge to joy-riding, and I paid a $50 fine or something.

Senator Rudman. Are there any other felony charges that I would consider serious—if you have only been arrested under ten times, I daresay you would remember what they were. You remember armed robbery, you remember assault with a deadly weapon. Any other serious charges, either violent or white-collar crime—fraud checks, con schemes, whatever?

Mr. Dredge. Yes, I was arrested in another case in Florida for buying fictitious or buying fraudulent airline ticket—not guilty.

Senator Rudman. Not guilty. Anything else that you can recall?

Mr. Dredge. Other than the jewelry store that I spoke of earlier on Arthur Godfrey Road—I don't know whether I was arrested then or not, Senator.

Senator Rudman. So to summarize, then, Mr. Dredge, you have served time for armed robbery——

Mr. Dredge. No, sir, I have not served time for armed robbery.

Senator Rudman. Well, I guess I misstated your answer.

Mr. Dredge. I was acquitted.

Senator Rudman. Of armed robbery?

Mr. Dredge. Yes.

Senator Rudman. You served time, five years, for the check scheme—three years, five-year sentence.

Mr. Dredge. Yes.

Senator Rudman. You served six months for assault with a deadly weapon.

Mr. Dredge. Four months on six months—both of those in Washington, DC.

Senator Rudman. That would be Federal, then.

And other than that, and the airline thing that you were acquitted for, there were no other major cases in which you were a defendant, either found guilty or acquitted?

Mr. Dredge. No, sir.

Senator Rudman. So that's the full extent of your criminal record as you recollect it.

Mr. Dredge. Oh—and Baltimore in 1981.

Senator Rudman. That's on the record—and by the way, what was the sentence in that case? Nobody brought that out.

Mr. Dredge. Five years on probation, $15,000 fine.

Senator Rudman. So your probation expired in 1986?

Mr. Dredge. Yes, sir.

Senator Rudman. Just a couple other questions. After Mr. Borders was arrested and charged, did you have any contact made with you, either by Mr. Borders, Mr. Nesline, or any other individual purporting to be friends of theirs who wished to discuss that matter with you?

Mr. Dredge. No, sir, I didn't.

Senator Rudman. You never got a call from Mr. Nesline?

Mr. Dredge. No, sir.

Senator Rudman. Have you ever discussed it with Mr. Nesline?

Mr. **Dredge**. Haven't seen Joe or talked to him since I left his apartment early on—I don't remember exactly when—but then Borders was arrested shortly thereafter, and I have not spoken to either one of them or anyone involved in anything.

Senator **Rudman**. So no one representing Mr. Borders got in touch with you after the arrest?

Mr. **Dredge**. No, sir.

Senator **Rudman**. Finally, you have a great familiarity with a number of the Miami crime figures. Were you a member of what would be called the Miami group of that particular family at any time early in your life when you first went to Florida?

Mr. **Dredge**. No, sir.

Senator **Rudman**. Did you spend any time in Cuba prior to 1960?

Mr. **Dredge**. Yes, sir.

Senator **Rudman**. What were you doing in Cuba?

Mr. **Dredge**. It was very inexpensive to go from Miami to Cuba—I think like $14 roundtrip—of course, $14 was a lot more than $14 is today, but it was very inexpensive then, and I would go over to the hotel, to the beach, to the clubs, to the cabanas, but not other than going there.

Senator **Rudman**. As a tourist?

Mr. **Dredge**. Yes.

Senator **Rudman**. Were you ever charged with a crime in Cuba?

Mr. **Dredge**. No, sir.

Senator **Rudman**. Were you ever charged with a crime overseas?

Mr. **Dredge**. No, sir.

Senator **Rudman**. Thank you, Mr. Chairman.

The **Chairman**. Are there further questions by any committee member?

Yes, Senator Pryor.

Senator **Pryor**. I am trying to ascertain two areas or look into two areas that I am trying to get myself straightened out on, Mr. Dredge.

First, when was the first day, the first time you had any contact from Mr. Borders? What is that date? I need to get that in my mind somewhere—the first time you ever heard of Mr. Borders and the first time you ever had contact from him or with him.

Mr. **Dredge**. That was in March of 1981.

Senator **Pryor**. March 1981. OK. And at that point, you've stated that you didn't believe Mr. Borders could so-called "fix the judge" or could do what he said he could do with Judge Hastings.

Mr. **Dredge**. We didn't discuss the judge—are we still on this initial meeting?

Senator **Pryor**. No, not in the initial meeting—well, once again tell me about the initial meeting.

Mr. **Dredge**. The initial meeting was that he asked me if I was from south Florida, or "You are from south Florida, aren't you?" and I said, "Yes, I am."

"Do you happen to know the Romano brothers?"

"No, I don't."

Senator **Pryor**. Yes, they are stand-up people; eventually that came back.

Mr. **Dredge**. Right, right.

Senator PRYOR. All right. Now, you at this point or shortly thereafter, when he kept telling you that he could do with Judge Hastings what would be beneficial to the Romano brothers, i.e., to let them off or not to have them fined or forfeiture would be returned, you at this time, at first, did not believe him, correct?

Mr. DREDGE. No, I really didn't believe him; I didn't believe him. I would like for you to understand that in the back of my mind, I knew that the man had a powerful position; exactly what it was, I didn't know. And quite frankly, to this day, I really don't know what his position was. The only thing that I knew was that he was appointed by President Carter and that he had a position in order to make judges.

Senator PRYOR. I understand this. Now, let's move to May 10th, on a Sunday morning in 1981, you were arrested.

Mr. DREDGE. Yes, sir.

Senator PRYOR. You were arrested that afternoon. May the 10th, on that morning, Mr. Borders called you; is this correct?

Mr. DREDGE. Yes, sir.

Senator PRYOR. And he told you that the following day, on May 11th, that there would be a continuance of the *Romano* case.

Mr. DREDGE. So that we're perfectly accurate, he called me the morning of May the 10th, Sunday morning, and asked me to go out to a pay phone—asked me to go up to Dadeland. I did. The phone rang. It was Borders. "Have you heard from the Romanos? Have you talked to the Romanos lately"—blah, blah, blah. And I don't know whether I said yes or no or whatever. And he said, "Tomorrow they will be sentenced. This is the last go-around. Come hell or high water, this is it, and if they don't perform and come up with the money, the next time the hammer will drop."

That was Sunday morning prior to me getting arrested. That is why I know it was May 10th, because that is the day I got arrested.

Senator PRYOR. Did Mr. Borders in that Sunday morning conversation with you, seemingly through a pay phone, indicate to you, Mr. Dredge, that you were going to be arrested that afternoon?

Mr. DREDGE. No, sir.

Senator PRYOR. Do you think he had any knowledge of that arrest, that upcoming arrest?

Mr. DREDGE. No, sir. I don't believe so.

Senator PRYOR. Did you at that time on the Sunday morning, when you finished the phone conversation with Mr. Borders on May 10 and presumably before you returned to your home, did you still have doubts about Mr. Borders being able to fix Judge Hastings?

Mr. DREDGE. Well, it went through my mind awfully quickly that if in fact this thing does get postponed the Romanos are going to know it. I am not talking to the Romanos. They are probably going to be wondering what in the hell happened or what took place. And, in fact, if that was going to happen, and he told me that it was going to happen, then I was like about 80 percent that he was next to Judge Hastings.

The following day or the day after, and I believe it was the following day after I was out on personal recognizance, I may have instituted the call to Borders.

Senator **Pryor**. That is the question I want. Did you institute the call to Borders to seek his counsel on who you should retain as an attorney?

Mr. **Dredge**. In Baltimore, yes, sir. And he told me Dwight Pettit in Baltimore. I told him of the hearing today that the Federal magistrate said that I had to appear at a future date in Baltimore in front of Judge Kaufman's court in Baltimore.

Senator **Pryor**. You had spent the previous night in jail?

Mr. **Dredge**. Yes, sir.

Senator **Pryor**. The night of May 10th?

Mr. **Dredge**. Yes, sir.

Senator **Pryor**. So you didn't call him that night to ask him his advice because the bond issue or how you were going to——

Mr. **Dredge**. It wasn't till the next day. Ten o'clock the next morning.

Senator **Pryor**. That is right. So when did you call him?

Mr. **Dredge**. When did I call him for what?

Senator **Pryor**. To ask his counsel and advice on who you should retain as an attorney.

Mr. **Dredge**. I called him Monday and told him the case was continued for a future date in Baltimore, and did he have any attorneys that could appear for me in Judge Kaufman's court.

I believe that is your question. Is that right?

Senator **Pryor**. You are in jail in Miami, in Florida. No, in Baltimore. Is that right? Baltimore or Florida?

Mr. **Dredge**. No. I was apprehended in Dade County, Florida.

Senator **Pryor**. That is right.

Mr. **Dredge**. On a Sunday afternoon.

Senator **Pryor**. That is right.

Mr. **Dredge**. And Sunday afternoon they put me—I really don't know where I was at.

Senator **Pryor**. Sure.

Mr. **Dredge**. They put me in some jail somewhere. Before I left I gave my wife several phone numbers to call for Bill, to tell Bill that I needed an attorney down here.

Senator **Pryor**. But you needed that attorney in order to get out of jail the next day and post some kind of bond or make those arrangements didn't you?

Mr. **Dredge**. Yes, sir.

Senator **Pryor**. And that is when he recommended Mr. McCrary, is that right—Jesse McCrary?

Mr. **Dredge**. He said that he would call Jesse McCrary and have Jesse McCrary meet me——

Senator **Pryor**. In time for the hearing.

Mr. **Dredge**. In the morning at the hearing at the magistrate's office.

Senator **Pryor**. So at that point you had a great degree, I assume, of credibility, or he had built up that degree of credibility with you. You don't just call up someone and say, "Who do I get to represent me as an attorney in a criminal matter?"

Mr. **Dredge**. No, sir. I believe that he trusted me a thousand percent.

Senator **Pryor**. But did you trust him?

Mr. DREDGE. Yes, I did. I trusted him. If you are getting to did I believe that he could fix the Federal judge prior to that day, I was very dubious. I had seen nothing to give me any belief that he could do anything with any judge, never mind a Federal judge.

Although, keep in mind I knew that he had a strong position.

Senator PRYOR. Mr. Chairman, only one more question and this will be very brief. I am quoting from the Miami Herald of October 18, 1981. It is talking about the *Hastings* case, and it says: "Dredge's reputation was more solidly established when police departments across the Eastern Seaboard which knew him as a convicted thief with a string of 20 arrests. * * *"

Do you dispute the 20 arrests allegation as in the Miami Herald?

Mr. DREDGE. I don't know how many times I have been arrested. I have never counted.

Senator PRYOR. You testified earlier less than 10, or fewer than 10 times.

Mr. DREDGE. I think that was from 1955.

Senator PRYOR. Is there a way that we can get, Mr. Chairman, the——

Mr. DREDGE. Can't you get a rap sheet for me?

Senator PRYOR [continuing]. A rap sheet for Mr. Dredge? Thank you.

Mr. ANDERSON. Mr. Chairman, I will represent, or be happy to stipulate. I will move in the FBI rap sheet right now. We are waiting for Mr. Murphy or someone who can authenticate it, but I can put it in right now as Respondent's No. 6, if that would be convenient for the Senator.

The CHAIRMAN. Just a second.

Senator Leahy?

Senator LEAHY. I think this would be helpful. I asked a question earlier and then Senator Rudman followed up and said.

One thing that came to mind, was the $15,000 ever paid, the fine?

Mr. DREDGE. I paid it.

Senator LEAHY. You paid it. OK.

The CHAIRMAN. Is there any objection to the FBI rap sheet becoming an exhibit in the case?

Mr. BARON. The parties jointly are prepared to submit—there are two exhibits. They are slightly different. One is what we could call a rap sheet. The others are really more in the nature of criminal documents. Maybe give a little more detail about a particular thing. We will put them both in.

Senator RUDMAN. Mr. Chairman, I would suggest they both go in the record. And quite frankly, had they been put in earlier they probably would have saved me asking some questions.

The CHAIRMAN. We will admit both into the record as separate exhibits.

Senator Pryor, did you have additional questions?

Senator PRYOR. Yes, one question.

When was the last time, Mr. Dredge, you had any contact with Mr. Borders? The final contact you have had with Mr. Borders?

Mr. DREDGE. I believe that it was some time in October of 1981. It could have been late September, I am really not sure.

Senator PRYOR. But not since 1981? You have no contact?

Mr. **Dredge**. Oh, no, sir. No, sir.

Senator **Pryor**. All right. How much would you take for that Tiffany lamp today?

Mr. **Dredge**. It is a Daffodil, 24 inch, done in 1898, and I would like to have $54,000 for it.

Senator **Pryor**. OK. You better find that attorney down there.

The **Chairman**. Senator Kerrey, did you have questions?

Senator **Kerrey**. Yes.

Mr. Dredge, following along Senator Pryor's questions, did you consider yourself a good friend of Mr. Borders?

Mr. **Dredge**. No. I had just met him.

Senator **Kerrey**. But evidence you have given so far today indicates that you have had many, many phone calls with him, that you were close to a business relationship with him, and now you say you just met him. He trusted you a thousand percent. You trusted him. You were not a friend of Mr. Borders?

Mr. **Dredge**. I can't say we were friends.

Senator **Kerrey**. Do you remember how you got his phone number? You said you met him at this party?

Mr. **Dredge**. How I got his phone number?

Senator **Kerrey**. Yes.

Mr. **Dredge**. I got his phone number from him.

Senator **Kerrey**. When was that?

Mr. **Dredge**. He got my phone number from Joe Nesline.

Senator **Kerrey**. He got your phone number through Nesline?

Mr. **Dredge**. My phone number—Joe Nesline called me and asked me if it was okay to give Bill Borders my phone number, and I said yes. Joe Nesline was my friend.

Senator **Kerrey**. And you got his——

Mr. **Dredge** [continuing.] From Bill Borders when he called me.

Senator **Kerrey**. At what time? When did you exchange phones?

Mr. **Dredge**. This is probably in the first ten days, 12 days of April.

Senator **Kerrey**. So he got your phone number after the meeting in March?

Mr. **Dredge**. Yes.

Senator **Kerrey**. And then called you subsequent to getting that phone number, and at that time you gave him——

Mr. **Dredge**. Gave him what?

Senator **Kerrey**. Your phone number.

Mr. **Dredge**. He already had—no. That is how he called me, he had my phone number.

Senator **Kerrey**. And then you got his phone number at that time?

Mr. **Dredge**. He gave me his phone number at the office.

Senator **Kerrey**. And you said that you had the phone number of his wife, his girlfriend?

Mr. **Dredge**. No, I never said his wife. I don't think he was married. His mother, his girlfriend, the office, and pay phones.

Senator **Kerrey**. And when did you get all those phone numbers?

Mr. **Dredge**. Sometime after he called me, I don't know. Whenever we made the arrangements that we would call, use phones, for me to give him a bank of phone numbers and he gave me phone numbers.

I can't tell you any specific date other than it was after the first week in April.

Senator KERREY. Most of your recollection seems to center, does it not, after you were arrested yourself? Most of your contact with Mr. Borders occurred after the 10th of May?

Mr. DREDGE. No. Most of them, I think—maybe not most, an awful lot of them occurred prior to me being arrested. An awful lot.

Senator KERREY. You had all of his phone numbers prior to the 10th of May?

Mr. DREDGE. I had whatever phone numbers he gave me. Whether they were all of them or not, I don't know.

Senator KERREY. You by the 10th of May had established a close enough relationship with him that you trusted him?

Mr. DREDGE. Yes.

Senator KERREY. He trusted you prior to the 10th of May?

Mr. DREDGE. Yes.

Senator KERREY. And yet after the 10th of May, your interest really was not Borders, your interest was trying to prevent some criminal prosecution in Baltimore; is that correct?

Mr. DREDGE. That is true.

Senator KERREY. And so essentially after the 10th of May you didn't care that much about what happened to Bill Borders? You were motivated almost entirely by concern for yourself?

Mr. DREDGE. Yes. I wanted to keep him interested.

Senator KERREY. Did you care what happened to him after the 10th of May?

Mr. DREDGE. I can't say that I did.

Senator KERREY. In your testimony you indicated that you were motivated by your concern for yourself?

Mr. DREDGE. Exactly.

Senator KERREY. And your contact with the Strike Force was based upon that motivation?

Mr. DREDGE. Exactly.

Senator KERREY. Did you tell Mr. Borders the truth prior to the 10th of May?

Mr. DREDGE. The truth of what?

Senator KERREY. The truth of anything.

Mr. DREDGE. I never told anything prior to May. You mean about my involvement with——

Senator KERREY. About anything. About the weather. About your relationship with the Romanos. About anything.

Mr. DREDGE. Probably not.

Senator KERREY. How is it possible that he developed a trust in you of a thousand percent if you probably did not tell him the truth prior to the 10th of May?

Mr. DREDGE. He is the one looking for money, not me. He is the one that has a dire need, not me. He is the one who came to me. I didn't go to him.

Senator KERREY. Are you saying he was blinded to your deception by the desire for money?

Mr. DREDGE. I believe so.

Senator KERREY. You said he trusted you a thousand percent. You believe he trusted you a thousand percent.

Mr. **Dredge**. Well, that is what I said. You could ask him how much he trusted me. What do I know?

Senator **Kerrey**. But you believe he trusted you a thousand percent?

Mr. **Dredge**. He told me an awful lot, didn't he?

Senator **Kerrey**. Yes, he certainly did. He trusted you a thousand percent. How is it possible that he trusted you a thousand percent? You believe it was just because he wanted the money?

Mr. **Dredge**. Money.

Senator **Kerrey**. Money only?

Mr. **Dredge**. M-o-n-e-y.

Senator **Kerrey**. What did you do to make him believe that that trust was justified?

Mr. **Dredge**. I told you that I was in contact with the Romanos.

Senator **Kerrey**. You lied to him?

Mr. **Dredge**. Yes.

Senator **Kerrey**. How are you able to lie to him in a manner that persuaded him that you were telling the truth?

Mr. **Dredge**. Perhaps, Mr. Kerrey, some people only hear what they want to hear, and that is what Borders wanted to hear obviously, or he wouldn't have kept up with the charade on my part. He was the one that was anxious and was concerned.

Senator **Kerrey**. Some people only hear what they hear. Are some people pretty good at telling people what they want to hear? Are you pretty good at that?

Mr. **Dredge**. I don't really know how to answer you. I knew what Borders wanted to hear as far as the Romanos was concerned and I kept that up.

Senator **Kerrey**. You were able to establish a relationship with a man who trusted you a thousand percent. It seems therefore to extend from that that you must be pretty good in spite of the fact that you knew you were not telling the truth. You must be pretty good at telling people what they want to hear.

Mr. **Dredge**. Not so much that. I think that his trust with me resulted from my friendship with Joe Nesline. He knows Nesline. He don't know me. Joe trusted me. Joe introduced us. Joe had us there. So I think part of the trust, or maybe the bulk of the trust had to do with Joe.

I don't know what his relationship was with Joe. I do know the relationship between Joe and John Shorter, which was very good and over a longstanding period of time. I don't know what the relationship is with John Shorter and Bill Borders or over what period of time.

Senator **Kerrey**. You are saying that he trusted you a thousand percent because of his trust of Nesline?

Mr. **Dredge**. Senator, you keep saying a thousand percent because I said a thousand percent.

Senator **Kerrey**. Yes.

Mr. **Dredge**. Let's say a hundred percent. Ninety percent.

Senator **Kerrey**. OK. Ninety percent.

Mr. **Dredge**. But he trusted me ostensibly initially in the beginning because of Joe Nesline. That really was the determining—without Joe Nesline, he would have never asked me anything. Had I met him on the street, he would not have asked me about the

Romanos. Had I met him down at the Little Sisters of the Poor, he would have never asked me about Romanos. Had I met him in court, he wouldn't have asked me about Romanos.

Senator **Kerrey**. He did more than ask you about the Romanos.

Mr. **Dredge**. No. Initially he asked me about the Romanos.

Senator **Kerrey**. He did more than initially, Mr. Dredge. He established a direct and constant phone call relationship with you, where he was going to phone booths——

Mr. **Dredge**. Yes, sir.

Senator **Kerrey** [continuing]. And putting himself at risk because he trusted you.

Mr. **Dredge**. Yes, sir.

Senator **Kerrey**. He did more than just call you once.

Mr. **Dredge**. Yes, sir.

Senator **Kerrey**. He did trust you.

Mr. **Dredge**. Yes, sir.

Senator **Kerrey**. And I am asking you, do you have the ability to get people to trust you even though they shouldn't?

Mr. **Dredge**. I can only answer that, again, if it had not been at Joe Nesline's and with Joe Nesline the answer is no.

Senator **Kerrey**. Did Borders do the right thing in trusting you? Should he have trusted you?

Mr. **Dredge**. In hindsight, I would tell you no.

Senator **Kerrey**. I would say so, yes. I would agree with you a thousand percent on that one.

Would you suggest to us, then, that you are pretty good at getting somebody to trust you when they should not trust you?

Mr. **Dredge**. I don't believe so.

Senator **Kerrey**. I have no other questions.

The **Chairman**. Any other questions?

Senator **Rudman**. Mr. Chairman, could we have that rap sheet introduced before this witness leaves. I would like to take a quick look at it before he leaves.

The **Chairman**. I think it has been admitted into evidence.

Senator **Rudman**. Well, if you could have it marked. I don't think it has been marked.

The **Chairman**. Could you mark it and show it to Senator Rudman.

Senator **Rudman**. If the evidence clerk could just pass it up here, Mr. Chairman, I would just like to look at it before the witness leaves, which I expect he will be shortly.

[The documents referred to were marked Respondent's Exhibit No. 6 and was received in evidence.]

The **Chairman**. Senator Specter, do you have some questions?

The **Vice Chairman**. Mr. Dredge, the day of May 11th has emerged as a significant day, where an attorney appears and asks for the continuance whereas there had been some expectation, at least on your part, from part, from your conversation with Mr. Borders that it would be the judge who made the continuance alone.

You had contacted Mr. Brother sometime in April on behalf of——

Mr. **Dredge** [continuing]. The Romanos.

The **Vice Chairman**. Well, he was the manager for the Romanos. Did you consider talking to Mr. Brother about the tip that you had been given that the judge was going to continue the case on his own on May 10th?

Mr. DREDGE. No, sir.

The VICE CHAIRMAN. Why not? Since you had already made the contact with Mr. Brother and you were trying to work out this arrangement, why didn't you give some consideration to putting that before Mr. Brother so he could get it to the Romanos so they could see what the judge—what Judge Hastings was allegedly likely to do?

Mr. DREDGE. I never considered at all going to anyone from the Romanos about anything after I initially did. I see no purpose for me to go to Romanos and tell them what was conveyed to me.

The VICE CHAIRMAN. But you had already been to see Mr. Brother, who was acting on behalf of the Romanos?

Mr. DREDGE. Yes, sir.

The VICE CHAIRMAN. But at any rate, you never considered informing Mr. Brother on behalf of the Romanos as to what was likely to happen?

Mr. DREDGE. No, sir.

The VICE CHAIRMAN. Did any information ever come to your attention in any way as to whether Judge Hastings had any tip-off in advance of his taking the bench on May 11th that the new counsel for the Romanos was going to ask for a continuance?

Mr. DREDGE. I had no way of knowing anything.

The VICE CHAIRMAN. Thank you very much.

The CHAIRMAN. Other questions? Senator Bond?

Senator BOND. Mr. Dredge, I may have missed it earlier on, and I was trying to go back in my mind's recall, if you had testified as to why prior to the time, May 10th, when your relationship with Mr. Borders became very important to you and you called for his assistance lining up an attorney, why you pursued in this matter of returning telephone calls and carrying on business with Mr. Borders. What was your reason for maintaining this relationship?

Mr. DREDGE. Because of his position I thought perhaps that he could be beneficial to me in my case.

Senator BOND. Well, you didn't know you had a case until May 10th.

Mr. DREDGE. You said after May 10th, didn't you?

Senator BOND. No, before May 10th. You had established a relationship with him prior to May 10th.

Mr. DREDGE. Yes.

Senator BOND. Now, why—you found out that you couldn't get through to the Romanos, and yet you continued to set up this complicated system of telephone calls and phone booth contacts. Why did you do all that?

Mr. DREDGE. First of all, initially it was because I was doing Joe Nesline a favor. Joe was his friend, wanted me to do him a favor. I did.

Then, and when it started I did go seek out the Romanos. I never talked to them but I did talk to Brother. Now we are up into April somewhere, and by now I know that there is a Federal judge in Miami involved. I thought that that was just so much conversation. I thought it would go away. I thought that that would be—quite frankly, I thought that Borders would soon tire of his pursuing this matter.

Again, as I said, I didn't believe that he had a Federal judge and I thought it would just go away.

Senator BOND. But you continued to carry out this charade with him or whatever it was that you were doing?

Mr. DREDGE. Yes. Yes.

Senator BOND. Why?

Mr. DREDGE. I just finished telling you.

Senator BOND. Just because of the friendship with Nesline?

Mr. DREDGE. Yes.

Senator BOND. You did it all just for friendship?

Mr. DREDGE. Yes, sir.

Senator BOND. And you risked getting into what could be another very serious prison offense——

Mr. DREDGE. But I really didn't believe that.

Senator BOND. How many hours did you spend, how much time did you spend prior to May 10th going through all these elaborate phone calls with Mr. Borders?

Mr. DREDGE. The phone calls, Senator, were very short. There was never lengthy conversations. And the ones in person was never very lengthy confrontations, unless I rode with him somewhere and we drove around. Other than that they were all very short. They was not long at all.

I would—oh, I don't want to put a time. I can't. But all of it together certainly wasn't a real long time.

Senator BOND. Several hours total, or maybe several days?

Mr. DREDGE. Well, I don't know and I don't put a time frame on it. But each one of the phone calls was never long.

Senator BOND. Did you go someplace to meet him? Did you actually physically meet him again after the meeting in the Nesline apartment?

Mr. DREDGE. Oh, yes.

Senator BOND. And where did you go to meet him?

Mr. DREDGE. I met him at the—I think it was the Hilton Hotel. I met him at his office two or three times, four times. I met him at the—either the Mayflower or the Wardman Park Hotel, and I am not sure which one.

Senator BOND. Did you have to make any special trips to Washington to meet him or were you always up here on some other business?

Mr. DREDGE. No, I never specifically came up to visit with Bill Borders.

Senator BOND. But you made the effort to go visit him at his office, even though you didn't think that he really had a judge and you were just going through the motions with him?

Mr. DREDGE Exactly.

Senator BOND. Just for friendship?

Mr. DREDGE. I didn't know that he was not in contact with Joe. Joe and I never talked about it. I just assumed that he was.

Senator BOND. Thank you, Mr. Chairman.

Senator KERREY. Mr. Chairman?

The CHAIRMAN. Yes? Senator Kerrey?

Senator KERREY. Just one follow-up.

Mr. Dredge, you were with Mr. Borders on the 7th and the 9th of July?

Mr. DREDGE. Yes.

Senator KERREY. And Romano was sentenced on the 8th of July, and you indicate that Borders did not mention that to you during the time you were with him from the 7th to the 9th?

Mr. DREDGE. I don't believe that he did. I don't think I was aware—he may have, I really don't know.

Senator KERREY. You said he may have?

Mr. DREDGE. I don't know. That is the best answer I can give you. I don't know whether he did or not.

The CHAIRMAN. Senator Lieberman?

Senator LIEBERMAN. Thank you, Mr. Chairman. Just a few questions.

Mr. Dredge, one of the important relationships in the story that you have told us today is yours with Joe Nesline. Who is Joe Nesline? And how did you first come to know him?

Mr. DREDGE. Joe Nesline was a local gambler of some repute.

Senator LIEBERMAN. Washington area?

Mr. DREDGE. Yes, sir.

Senator LIEBERMAN. All right.

Mr. DREDGE. Washington, Maryland and Virginia. He goes back to—he worked for Jimmy LaFontaine, which is back many years ago.

Senator LIEBERMAN. Who was that?

Mr. DREDGE. That was another gambler that had a gambling establishment on Eastern Avenue and Bladensburg Road.

Senator LIEBERMAN. How long ago did you meet Mr. Nesline?

Mr. DREDGE. Sometime in the 1940s.

Senator LIEBERMAN. The 1940s?

Mr. DREDGE. Yes, sir.

Senator LIEBERMAN. You have known him now for more than 40 years?

Mr. DREDGE. Yes, sir.

Senator LIEBERMAN. And been involved in business matters together?

Mr. DREDGE. No. We have never been involved in any business matters.

Senator LIEBERMAN. Just a friendship?

Mr. DREDGE. Yes, sir.

Senator LIEBERMAN. And, as I recall your testimony, you first met William Borders at Joe Nesline's apartment?

Mr. DREDGE. Yes, sir.

Senator LIEBERMAN. And that was earlier in 1981?

Mr. DREDGE. March 1981.

Senator LIEBERMAN. March 1981. Did you understand at that time what the relationship between Borders and Nesline was? In other words, was it your understanding that that was a long-time relationship?

Mr. DREDGE. I had no understanding about it.

Senator LIEBERMAN. Had no understanding at all?

Mr. DREDGE. No, sir.

Senator LIEBERMAN. Either way?

Mr. DREDGE. No, sir.

Senator LIEBERMAN. But, if Nesline asked you to help Borders, as far as you were concerned that was enough for you?

Mr. DREDGE. Yes, sir.

Senator LIEBERMAN. I was troubled, curious along the same lines as Senator Bond was in his questioning. That you were spending some time, you were going to some effort, perhaps you were incurring some risk on behalf of William Borders, accepting your testimony that this relationship preceded your own arrest on the drug charges, was there never an occasion when Borders said to you, "If this works out I will share the money with you"?

Mr. DREDGE. No, sir.

Senator LIEBERMAN. So you had no personal interest in this except for your friendship with Joe Nesline?

Mr. DREDGE. That is exactly right.

Senator LIEBERMAN. Let me ask you a couple of questions about Judge Hastings, just to clarify what you said earlier. I gather you saw him a couple of times you think in hotels in Washington where you went to meet William Borders; is that correct?

Mr. DREDGE. Right.

Senator LIEBERMAN. But you were not introduced to him on those occasions?

Mr. DREDGE. No.

Senator LIEBERMAN. And how did you know it was Judge Hastings?

Mr. DREDGE. I recognized him when I seen him walking by.

Senator LIEBERMAN. But how were you able to identify him in the first place? How did you know what Judge Hastings looked like?

Mr. DREDGE. I told you I seen him in Borders' office.

Senator LIEBERMAN. OK. So that meeting preceded, the meeting in William Borders' office preceded the couple of occasions when you saw him at the hotel?

Mr. DREDGE. Yes, sir.

Senator LIEBERMAN. And just to clarify again, the meeting—perhaps it was not even a meeting, but the occasion in Borders' office when you were introduced to Hastings was really at some—Judge Hastings was at some distance, I gather. He was over with his hands on the secretary's desk.

Mr. DREDGE. Right.

Senator LIEBERMAN. And Mr. Borders said, "This is Judge Hastings"?

Mr. DREDGE. Yes.

Senator LIEBERMAN. Did you shake hands with him?

Mr. DREDGE. No, sir.

Senator LIEBERMAN. And again, could you tell me about how far you were from Judge Hastings on that occasion?

Mr. DREDGE. Well, when Bill said it we was about as far as from here to this gentleman, or to the table there. But Bill and I walked past the judge on out into the back alley.

Senator LIEBERMAN. Right. So that——

Mr. DREDGE. So when he said it, Judge Hastings—may I demonstrate?

Senator LIEBERMAN. Yes. Go right ahead.

Mr. DREDGE. He was leaning over talking to the secretary. Bill and I came in from here. Bill said, "This is Judge Hastings," and Judge Hastings turned around, smiled and——

Senator LIEBERMAN. That was it?

Mr. DREDGE. And Bill and I walked behind him and on out the back door.

Senator LIEBERMAN. Right. As far as you recall, your name was not mentioned on that occasion?

Mr. DREDGE. No, sir, I don't believe it was. I know it wasn't.

Senator LIEBERMAN. In other words, Borders didn't say, Judge Hastings, this is Bill Dredge?

Mr. DREDGE. No, sir. No, sir.

Senator LIEBERMAN. OK. To the best of your recollection, those are all the occasions on which you before this date have seen Judge Hastings?

Mr. DREDGE. Yes.

Senator LIEBERMAN. Just another line of questioning, very briefly. Just a fact question for you. I gather that you went, by your testimony, to see the United States Attorney to begin to enter into the negotiations that led to this bargain on July 20th or 21st?

Mr. DREDGE. Yes, sir.

Senator LIEBERMAN. And, if I heard correctly, you mentioned not only the *Romano* case but the *Trafficante* case as well. Is that correct? Did I hear that correctly?

Mr. DREDGE. I initially said the *Trafficante* case.

Senator LIEBERMAN. Right.

Mr. DREDGE. In order to get their attention.

Senator LIEBERMAN. OK. You mentioned that there was a prominent lawyer coming to meet Trafficante to set up a bribe of a job?

Mr. DREDGE. Right.

Senator LIEBERMAN. How did you know that? Had Borders told you that he was coming?

Mr. DREDGE. I was supposed to pick Borders up at the airport, and I didn't.

Senator LIEBERMAN. OK. We have some earlier testimony by yourself about what might happen to someone who ended up on the wrong side of Mr. Trafficante. Weren't you concerned about implicating him in your discussions with the Federal authorities?

Mr. DREDGE. Yes, I was.

Senator LIEBERMAN. But you still felt it was worth it, to get their attention?

Mr. DREDGE. Also, the Romanos—I mean I'd already done it, the Romanos are hooked up with the Genovese outfit, so what's the difference?

Senator LIEBERMAN. In either case, you are——

Mr. DREDGE. If you are shot for a sheep or if you are shot for a lamb, what the hell, you're still shot.

Senator LIEBERMAN. OK. So, the risk was not—as far as you were concerned, you had already made a judgment to try to make a deal with the Federal prosecutors——

Mr. DREDGE. Yes, sir.

Senator LIEBERMAN [continuing]. And either way, you were incurring danger?

Mr. DREDGE. Yes, sir, and I feel that way today.

Senator LIEBERMAN. Understood. OK.

No further questions. Thank you.

The CHAIRMAN. Additional questions? Senator Pryor.

Senator PRYOR. Do you mean you were incurring all that danger and all these risks and you didn't know if you were going to get paid for this?

Mr. DREDGE. Get paid? How do you mean, get paid? Money?

Senator PRYOR. Money. What was going to——

Mr. DREDGE. There has never ever been any question of me accepting money from the Government for anything other than transportation.

Senator PRYOR. No, sir. No, sir, not from the Government, but when you were originally getting into this and walking off into this possible fix——

Mr. DREDGE. You mean with Borders?

Senator PRYOR. That is correct. Did Mr. Borders offer to pay you money for your——

Mr. DREDGE. No, sir.

Senator PRYOR [continuing]. As a fee?

Mr. DREDGE. No, sir.

Senator PRYOR. Did Joe Nesline offer to pay you money as a fee?

Mr. DREDGE. Joe Nesline and I never talked about this. No, he never offered me any money. No one ever offered me any money.

Senator PRYOR. Do you mean, for example, when you and Joe Nesline were riding down to the video center on 14th or 15th and Pennsylvania, do you mean he never said, "No, Bill, we've known each other a long time and I'm going to take care of you if this works out," nothing like that was ever said?

Mr. DREDGE. No, sir.

Senator PRYOR. Anyone from the Romano brothers, their attorneys or friends or anyone there offer you any money for this?

Mr. DREDGE. No, sir.

Senator PRYOR. Anyone from Mr. Trafficante's organization offer you any money to see what you could do?

Mr. DREDGE. No, not even the Little Sisters of the Poor.

Senator PRYOR. Why were you in this, Mr. Dredge?

Mr. DREDGE. If you would allow me, Joe Nesline—and I am going back a lot of years—I needed money to pay the rent on my apartment here. As a matter of fact, I was living at Glass Manor.

Senator LEAHY. You were living where?

Mr. DREDGE. At Glass Manor. This is a number of years ago, and Glass Manor then, I think a 3-bedroom, 2-bath apartment was $135 month. It was a nice apartment, but that was a hell of a lot of money. I couldn't pay the rent, for whatever reasons, and I went to Joe—he lived on Queens Chapel Road at the time, and he was married to his then-wife was Gladys, who was alive, and she was upstairs sick in bed and she was dying of cancer, and I went to Joe and knocked on his door at 11:00 o'clock at night, and said, "Joe, I need some money." I come on in and sat down at the table, he went upstairs and come back and put a box on the table and said, "Take any or whatever you need." I opened it up and I took two $100 bills. I could have taken 20 just as well, but I took two. He was a friend, and whether he considers me one today—and I would seriously doubt it—he was my friend.

I have a medallion that he gave me. His sister is a nun. His sister gave him a medallion and said it's an 18-carat gold medallion, and the medallion says something to the effect, "With carrying this, no ill-harm will ever befall you." Joe gave me that.

I had and have a lot of respect for Joe Nesline. He has truly been a great friend of mine. In this particular case, I can't say that I have returned him in kind. But because of Joe, I did what I did with Borders out of friendship. It had nothing to do with money, absolutely nothing to do with money, and that's the best I can tell you.

Senator PRYOR. Thank you, sir.

The CHAIRMAN. Are there other questions from members of the committee? Senator Leahy?

Senator LEAHY. Just very briefly. I am just still trying to get the picture of what happened in all of this. When Mr. Borders told you that Judge Hastings would continue the *Romano* sentencing; what did he say? Did he say he's going to continue it, or did he say I'll continue it, come hell or high water, or——

Mr. DREDGE. He called me and asked me to go out to a phone, and I did. He said, "Tomorrow the judge is going to continue the case. Now, come hell or high water, this is the last go-round, these guys have got to come up with the money. I can't believe that they can't come up with the money; it's incredible; I mean these guys"—

Senator LEAHY. Who was saying that, come hell or high water——

Mr. DREDGE. This was Borders, Borders was saying to me——

Senator LEAHY. That is Borders' words, "come hell or high water." He's not saying that Judge Hastings said that?

Mr. DREDGE. No, so, it's Bill Borders saying it, "that the case will be postponed tomorrow, but this is the last go-round, the next time the hammer will fall." I think he expected me or thought that I would convey that to the Romanos, inasmuch as I was supposed to be talking to the Romanos.

Senator LEAHY. And he didn't——

Mr. DREDGE. That was Sunday, May 10th.

Senator LEAHY. And did he do any specific quotes of the judge, that you recall?

Mr. DREDGE. Something to the effect that the judge was going to do it on his own, he didn't need any help from anybody or nobody was going to prompt anything, or words to that effect, but that's the gist of it.

Senator LEAHY. OK. Thanks.

The CHAIRMAN. Senator Lieberman?

Senator LIEBERMAN. Mr. Chairman, with apologies, I just want to come back to a couple of questions I asked, just to clarify. I should have asked it before.

On those two occasions when you were in the hotel and met Mr. Borders here in Washington and Judge Hastings was there, were there crowds in the hotel, or were you in a room with just Judge Hastings and Mr. Borders?

Mr. DREDGE. Not, it was in the lobby.

Senator LIEBERMAN. It was in the lobby, and there were a number of people around?

Mr. DREDGE. No, there really wasn't—were there people around, probably three, four, five people, yes. Was there a mob of people around?

Senator LIEBERMAN. Yes.

Mr. DREDGE. No.

Senator LIEBERMAN. And I take it Judge Hastings was separate from your conversation——

Mr. DREDGE. He wasn't where Bill and I was.

Senator LIEBERMAN. Right. Because we've had some testimony, we've seen some indication or heard argument that Judge Hastings and Mr. Borders were members of at least one association together, and I'm just curious as to whether there might have been a meeting of that association.

Mr. DREDGE. I don't know.

Senator LIEBERMAN. You don't know. You don't even really know whether they were there together, do you?

Mr. DREDGE. No, I don't.

Senator LIEBERMAN. OK. Thank you.

The CHAIRMAN. Senator Burns?

Senator BURNS. Thank you, Mr. Chairman.

Mr. Dredge, did Mr. Nesline ever make any comments about what kind of a person Mr. Borders was?

Mr. DREDGE. No, sir.

Senator BURNS. Specifically, that he was the type of person that he could do what he said he could do?

Mr. DREDGE. No, sir.

Senator BURNS. Did you ever tell Mr. Nesline about the Borders' request regarding the Romanos?

Mr. DREDGE. It's Nesline.

Senator BURNS. Nesline, I'm sorry.

Mr. DREDGE. No, I didn't.

Senator BURNS. That's all I have. Thank you.

The CHAIRMAN. Are there any other questions by counsel? Is there any reason that counsel can cite why this witness should not be excused at this point?

Mr. ANDERSON. I think you may have erred in saying are there any more questions by counsel, but I would like to ask some follow-ons to the Senators, if I might, just briefly, and I will do it standing in place.

The CHAIRMAN. Well, let me just get straight on what our procedure is going to be. We had direct examination, we had cross, we had redirect, we had a chance for recross, and we had questions by all Senators. I don't intend to go back through redirect and recross at this point.

Mr. ANDERSON. I don't expect to do it often, but this is fairly extensive and has opened some new areas.

The CHAIRMAN. Following these questions, any questions by the two counsel, this witness will be excused for the balance of this trial, and that's understood.

Mr. ANDERSON. Do you want me to stand in place, Mr. Chairman?

Senator BRYAN. Mr. Chairman?

The CHAIRMAN. Senator Bryan.

Senator **Bryan**. I would just like to inquire about procedure here. If we establish the precedent on this witness, that following the colloquy between the Senate panel and the respective witnesses, that we are again to open it up for counsel, it seems to me that we are going to need reservations through October. If we do it on this witness here, how do we restrict or confine or perhaps the Chair finds some particular reason why we ought to do it, but I am sure that the questions that the panel raises may indeed prompt additional thoughts on the part of counsel on either side of this issue, but it seems to me we ought to have our procedures pretty well established, and if we break ground here, it seems to me we have established a precedent.

The **Chairman**. Mr. Anderson, could you explain why you think we need to deviate from the normal procedure we planned to follow?

Mr. **Anderson**. Two responses, I think, and I recognize that it is extraordinary to have an at least quasi-judicial adversary proceeding in this body, but ordinarily there is at least some measure of effort to let the parties advance their positions, which may be somewhat different than is done ordinarily in legislative proceedings.

Secondly, I think the control that the Senator is looking for is please charge the questions to my time or to Judge Hastings' time. I think you have laid down a fairly tight framework that I think we are trying to honor, which was intended, I believe in Senator Specter's view, to get you out of here by August 4th.

I've read your rulings on my motion and I don't think there is much danger that either we or anyone else needs reservations until October.

Mr. **Bryant**. Mr. Chairman?

The **Chairman**. Representative Bryant.

Mr. **Bryant**. If I could be heard briefly on this. Without expressing opinion on whether or not Mr. Anderson should be able to ask further questions of this witness, we would urge the Chair to adopt a witness-by-witness expression of discretion about this particular question.

I would urge the committee to view this matter as one which usually follow-ups would not be advisable and might use up too much time, but it does occur to us that on occasion it might be best for us to be able to ask questions that would further elucidate or further explain information which was brought up in a fragmentary way by questions from the Senators. We would just urge you to take it on a witness-by-witness basis.

The **Chairman**. Considering the extreme steps that we went through to bring this witness here and the fact that he would not be available after we adjourn this afternoon, we will permit a few additional questions to this witness, but in the future we will plan, after Senators ask their questions, to dismiss the witness.

Mr. Anderson, if you could go ahead and use the podium and ask your additional questions.

FURTHER CROSS EXAMINATION

Mr. **Anderson**. Mr. Nesline, my questions are really just a follow-on to——

Mr. **Dredge**. I'm William Dredge.

Mr. **Anderson**. Sorry, Mr. Dredge—my questions are a follow-on to your friendship with Joe Nesline. Now, I think I recall this morning—correct me if I am wrong—that sometime in July, you were in Mr. Nesline's apartment when Santos Trafficante was there. Is that correct?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And before that you had gone downtown with Mr. Nesline and he asked you, "Billy, Santos Trafficante wants me to act as a middleman with Bill Borders. Should I do it?" Is that correct?

Mr. **Dredge**. Yes.

Mr. **Anderson**. And you said no, is that correct?

Mr. **Dredge**. I said, "Have you had any involvement to this point in time?" He said no. I said, "Well, don't get involved."

Mr. **Anderson**. But you knew that Mr. Trafficante was at his house and that Mr. Nesline had gone to some lengths to put the two men together on that occasion, didn't you?

Mr. **Dredge**. Run that by me again.

Mr. **Anderson**. You knew that Mr. Trafficante had used Mr. Nesline's apartment phone to reach Mr. Borders and that Mr. Nesline had chauffeured him to the meeting?

Mr. **Dredge**. Yes.

Mr. **Anderson**. Did you tell your friend Joe Nesline that you were going to go in and set up Judge Hastings?

Mr. **Dredge**. No, sir.

Mr. **Anderson**. Did you think for a moment that Santos Trafficante might be angry with Joe Nesline when what he thought was a valid deal went down this way?

Mr. **Dredge**. What? No, sir, I didn't.

Mr. **Anderson**. No further questions, Mr. Chairman.

The **Chairman**. Do the House counsel have any additional questions?

Mr. **Baron**. I have no further questions.

The **Chairman**. Is there any reason why this witness should not be excused for the remainder of this trial?

[No response.]

If not, Mr. Dredge, we appreciate your testimony and you are excused.

The committee will take about an 8-minute recess and then the House will present its next witness.

[A brief recess was taken, following which the committee resumed in open session.]

The **Chairman**. The committee will reconvene.

We are now in open session.

At 9:00 a.m. this morning, the committee went into closed session, it did so for the purpose of hearing the testimony of Mr. William Dredge, a witness who had expressed concerns about his personal safety. As a result of those expressed concerns, the committee determined that that testimony should be heard without the public or the media present. For the record, I note that Judge Hastings objected to the taking of the witness' testimony in closed session.

A written transcript of Mr. Dredge's testimony was prepared and it, like all transcripts of these proceedings, will be made publicly available. In addition, a videotape was made of Mr. Dredge's testimony, which will be available for viewing only by members of the full Senate and staff. Consistent with the Senate's efforts to provide all members of the Senate with a complete record of these proceedings, each Senator not on the committee will therefore be able to view both the transcript and the videotape.

At this point, would the House call its next witness?

Mr. **BRYANT**. Mr. Chairman, at this time we call Neal Sonnett, and he will be examined directly by Mr. Synar.

The **CHAIRMAN**. Mr. Sonnett, would you raise your right hand? Do you, Neal Sonnett, swear and affirm that the evidence you shall give in the case now pending between the United States and Judge Alcee L. Hastings shall be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. **SONNETT**. I do.

The **CHAIRMAN**. Please be seated.

Counsel, proceed.

TESTIMONY OF NEAL SONNETT

DIRECT EXAMINATION

Mr. **SYNAR**. Good afternoon.

Mr. **SONNETT**. Good afternoon.

Mr. **SYNAR**. Could you state your name for the record?

Mr. **SONNETT**. My name is Neal Sonnett, N-e-a-l, last name, S-o-n-n-e-t-t.

Mr. **SYNAR**. And, Mr. Sonnett where do you reside?

Mr. **SONNETT**. I reside in Miami, Florida.

Mr. **SYNAR**. And what is your profession?

Mr. **SONNETT**. I'm an attorney-at-law.

Mr. **SYNAR**. How long have you been practicing law?

Mr. **SONNETT**. I was admitted to the bar in November of 1967.

Mr. **SYNAR**. In brief, what have been your employment activities since the admission to the bar?

Mr. **SONNETT**. After my graduation from law school, I received an appointment as an Assistant United States Attorney in the Southern District of Florida. I served there as an Assistant and as Chief of the Criminal Division for that office until May of 1972. I went into private practice in October of 1972, and I have been a partner in my own firm and with various names since that time.

Mr. **SYNAR**. Is that firm specialized?

Mr. **SONNETT**. Yes, we do exclusively criminal defense work, primarily in Federal courts.

Mr. **SYNAR**. Now, during 1981, Mr. Sonnett, did you have the occasion to represent Thomas and Frank Romano?

Mr. **SONNETT**. Yes, I did, sir.

Mr. **SYNAR**. In what connection did you represent them?

Mr. **SONNETT**. I was asked to take over the appeal of their case, after they had been convicted, following a jury trial and, as my attorney-client relationship with them progressed, I was asked to expand the scope of my representation.

Mr. SYNAR. Now, do you represent the Romanos at this time?

Mr. SONNETT. Both Romanos are now deceased.

Mr. SYNAR. Now, have you testified as to matters relating to the Romanos in Judge Hastings' previous proceedings?

Mr. SONNETT. Yes, sir, I have.

Mr. SYNAR. Now, prior to the Romanos' death, Mr. Sonnett, were you advised that they did not wish to assert the lawyer-client privilege with respect to matters you discussed with them which relate to Judge Hastings?

Mr. SONNETT. Yes, sir, that is correct.

Mr. SYNAR. Now, turning your attention to April 1981, at the time what was the status of the sentencing of the Romanos?

Mr. SONNETT. In April of 1981?

Mr. SYNAR. Yes.

Mr. SONNETT. The Romanos had not yet been sentenced.

Mr. SYNAR. And at that time, what was the status of the forfeiture issue?

Mr. SONNETT. The forfeiture issue was pending. There had been a forfeiture hearing in February and a memoranda was being submitted to the court. I think the court ultimately ruled on the forfeiture issue in early May, May 4th, I believe.

Mr. SYNAR. Now, at that time, then, Judge Hastings had before him the Romanos' motion for a new trial or acquittal, notwithstanding the verdict?

Mr. SONNETT. Yes, there had been motions for new trial and for judgment of acquittal after verdict filed by my prior counsel immediately after the conviction. I had not yet filed motions of my own at that time.

Mr. SYNAR. But the judge had yet to decide whether to forfeiture the sum of money or whether to sentence the Romanos to prison?

Mr. SONNETT. At that time, there had been no ruling either on the motion for a new trial or judgment of acquittal or on the forfeiture aspects of the case.

Mr. SYNAR. Right. Now, in the course of your representation of the Romanos, did you have a telephone conversation with either one of them in the spring of 1981 relating to Judge Hastings?

Mr. SONNETT. Yes, sir, I did.

Mr. SYNAR. With whom and when did you have that conversation?

Mr. SONNETT. I had the conversation with Tom, it may have been both Tom and Frank—they often got on extension phones—and the conversation would have been held approximately April 13, 1981.

Mr. SYNAR. Now, how did you know that conversation occurred on that date?

Mr. SONNETT. Well, we later tried to piece the date together by using a file memorandum that I had and by using some hotel records that the Romanos provided me with.

Mr. SYNAR. Now, I am showing you a document that has been marked for identification as House Exhibit 26. Would you identify this document?

Mr. SONNETT. Yes, sir, this is a xerox copy of hotel records that were provided to me by Tom and Frank Romano.

Mr. SYNAR. Now, Mr. Chairman, I would like now to ask that House Exhibit 26 be admitted into evidence.

The CHAIRMAN. Is there objection?

Mr. ANDERSON. No.

The CHAIRMAN. It will be admitted.

[The document referred to was marked House Exhibit No. 26 and was received in evidence.]

Mr. SYNAR. Now, Mr. Sonnett, do you have any of your own written records which would also help you identify the date you had this conversation with Tom Romano in April 1981?

Mr. SONNETT. Yes, sir, there was one file memorandum which I had which was dictated and typed on April 16th, which made reference to that telephone conversation.

Mr. SYNAR. Now, is it your practice to write memoranda for the files concerning important telephone conversations you have with clients and others?

Mr. SONNETT. It is my practice to write memorandums to the file on as much of what happens during the course of a case as I can, yes, sir.

Mr. SYNAR. Now, that is done in the ordinary course of business as an attorney, is it not?

Mr. SONNETT. Yes, sir, it is.

Mr. SYNAR. OK. Now, showing you a document marked for identification as House Exhibit 25, can you identify this document for us?

Mr. SONNETT. Yes, sir, this is the tissue copy——

Mr. ANDERSON. Objection, Mr. Chairman. I don't mind his objecting to it, but I would ask that, in order that I may have a chance to pursue my objection, he simply identify the piece of paper before he gets into the content.

The CHAIRMAN. I believe he has just been asked to identify it at this point.

Mr. SONNETT. This is a copy of a memorandum from my file which I previously provided to special counsel.

Mr. SYNAR. Now, with respect to the conversation with Tom Romano on or about April 13 and April 16, 1981, did you ever report these conversations to representatives of the Department of Justice?

Mr. SONNETT. I did sometime after the event, yes, sir.

Mr. SYNAR. Now, when was that?

Mr. SONNETT. It was shortly after Mr. Borders was arrested on October 9, 1981.

Mr. SYNAR. Now, what prompted you to do that?

Mr. SONNETT. Well, I had received a telephone call from the Chief of the Strike Force on a Friday, I think it was a Friday, late Friday afternoon, Mike Levin was the name of the Strike Force prosecutor, and he indicated to me that he was calling to give me some advance warning because he expected that I would be getting telephone calls from the media. He related to me that Mr. Borders had been arrested, that it was as a result of an investigation in which an FBI agent had impersonated one of my clients, and gave me a brief overview of the facts, that it concerned an attempted bribery.

At that time, I recalled my prior conversations with Tom and Frank Romano and thought it would be prudent to let him know about the conversations, in case the Government wished to pursue it.

Mr. SYNAR. Now, turning your attention to that conversation you have previously discussed, which took place on or about April 13, what did Tom Romano tell you?

Mr. ANDERSON. Objection, Your Honor. Hearsay. And may I make a proffer on this one in which enable the Chair to rule?

My understanding is that if this witness is permitted to testify, he will tell the committee what Tom or Frank Romano told him, is hearsay level at least number one, and in that will report that Tom Romano told him that still a third person had told Tom Romano, level two, that a fourth person had told the third person that a fifth person should talk to him, and then would report what the fifth person is alleged to have said to the third person is alleged to have said to Tom Romano, as alleged to have said to Mr. Sonnett. You have more levels of hearsay there than I am fully capable of directing.

You have in the circumstance, Mr. Romano is dead, he was available and indeed accompanies Mr. Sonnett, it is my understanding, in 1981 when these matters were discussed with the prosecution. It is my understanding that the committee has received a submission that the alleged person on the other end of the telephone from Mr. Romano is disabled, and we have had testimony that the third person is dead. These are multiple levels of hearsay that do not bear the indicia, any indicia of reliability, because the figures, with the exception of Mr. Sonnett, have all been identified in these proceedings as involved in one organized crime family or another.

I recognize the committee intends to apply the rules liberally, but the rule against hearsay, in the interest of justice, does not permit justice, includes justice to the respondent. The introduction of stale evidence from dead witnesses which bear no indicia of reliability to be produced at a trial which is occurring eight years after the fact. I object most strenuously to the line, to the document, and the assertion.

The CHAIRMAN. Representative Synar, did you wish to respond to that objection before we rule?

Mr. SYNAR. Yes, sir, Mr. Chairman. Obviously, the House believes this testimony is extremely important. The purpose of the hearsay rule is to protect jurors from the evidence which could enflame and unduly influence the objective decision-making. There is no danger, in our opinion, of that result in this body. This committee has the ability to weigh that evidence and assess the credibility.

With respect to what Mr. Anderson has said, we have available and would present for the record evidence that the condition of Mr. Moscatto, of his health, an affidavit to the effect that his attorney, in qualifying his doctor's statement, has filed with the doctor an appearance for trial and that has been continued because of his health.

The statements made by Mr. Moscatto to Tom Romano were against his interest also. He was making an elicit offer, which could expose him to criminal liability as an accessory. Mr. Romano could have turned him in to the authorities. As this statement was made against his penal interests, it should be admitted pursuant to Federal Rule of Evidence 803(b)(3), which permits the exception for statements made against one's interests.

The testimony of Mr. Sonnett which we seek to get here today concerning Mr. Romano's recitation of the conversation should be allowed under Federal Rule of Evidence 803-24. Mr. Romano is unavailable, as Mr. Sonnett has said, as a witness because he is deceased. Although the rules do not provide for specific exception to this type of testimony, Mr. Chairman, it should be subject to the general rule of trustworthiness, and the disclosure by Romano to his attorney, Mr. Sonnett, is similar to the patient-doctor, the hearsay exception permitted under Rule 803-4. Now, there is an incentive to tell your attorney the truth.

Now, Mr. Romano thought enough of the validity of the conversation to report the substance to his attorney. This was reported within a short time after the conversation, which argues against its possible fabrication. Mr. Sonnett also thought it was valid enough to warrant advice to the Romanos, and to ultimately prepare that memo for the file. This statement is clearly material to this conspiracy charge.

Since the Romanos are dead and Mr. Moscatto was unavailable, the testimony by Mr. Sonnett is more probative than any other available evidence. Most importantly, Mr. Chairman, this committee should hear this evidence, since the interest of justice will be best served by allowing a greater flexibility in the admission of the evidence.

This committee has already been provided with arguments and Law Review articles concerning the rules of evidence to be followed in impeachment proceedings. This is a proceeding unique to the Senate. The proceedings do not require a strict rule of evidence, nor are they necessary, and this body and these particular members, these 12 members are capable of weighing that evidence, while taking into account that certain evidence may be hearsay.

For these reasons, Mr. Sonnett should be permitted to testify to the substance of the conversation by Tom Romano.

Mr. ANDERSON. May I reply, Mr. Chairman?

The CHAIRMAN. Yes. Do so briefly, if you could.

Mr. ANDERSON. The rules of evidence were strictly applied by this body through 1936. It is simply a one-liner in a precedent. I understand there are Law Review articles that have questioned it. The rules of evidence, the Chair has indicated in considering a proffer of mine, that there is a risk that the Senate will become unduly confused by records in the evidence that are just scattered in the documents.

There is no indicia of reliability. The committee has heard that Mr. Dredge's motivations and others' motivations in manipulating events are facts of consequence. The fact that Mr. Moscatto is disabled, the fact that Mr. Dara is dead, the fact that Mr. Nesline is dead is not attributable to us.

Justice includes a search for the truth and fairness to the respondent. There are no indicia of reliability in messages passed around the circle, through a group of people who have all been identified without dispute as members of organized crime.

I simply submit that the hearsay rule has been honored in prior impeachments, and this violates it in all of its aspects and, quite apart from the interest of justice, there ain't no indicia of reliability on this one.

The CHAIRMAN. We will sustain the objection and not permit the witness to answer that question.

Mr. SYNAR. Just a second, Mr. Chairman.

[Pause.]

At this time, no further questions, Mr. Chairman.

The CHAIRMAN. Is there cross-examination?

Mr. ANDERSON. Mr. Chairman, it would not be true cross. It really is a question of Mr. Sonnett is on our witness list, he has identified himself as senior practitioner familiar with the operations of the courts spanning this entire period. He was also the defense counsel at the May 11th hearing.

I can invite Mr. Sonnett to come back, which I am sure he wouldn't like, or I can go well beyond the scope that would ordinarily be cross and try and get him out of here tonight. I bow to the committee's will.

The CHAIRMAN. Generally, we wanted to have witnesses called only once. The difficulty we face is that we are advised that there will be a vote in another four minutes in the Senate, and we earlier advised Senators that we would recess at 5:30, so I would suggest that—are you prepared to go forward with any cross-examination at this point?

Mr. ANDERSON. Well, since you ruled out there would be no legitimate cross based on what I understand Mr. Synar to have asked, really, I will be advancing into the area of what Mr. Sonnett did, developing the defendant counsel's understanding of who communicated what with whom regarding the famous May 11th continuance, whether Judge Hastings had any advance notice. I will go through the balance of the case with Mr. Sonnett and go beyond that in terms of a perception of the senior member of the Miami bar about Judge Hastings. It will not take me long, it will be relevant, but it is not proper cross and I do not want to sandbag the House by putting in my case during theirs.

Mr. SYNAR. Mr. Chairman, just one point of information.

The CHAIRMAN. Mr. Synar.

Mr. SYNAR. We do not have listed in our files Mr. Sonnett being listed on the witness list for Mr. Anderson or Judge Hastings.

Mr. ANDERSON. You have him in Category, I believe it is C, that there may be conditions arising in which I would have to call people who I was not able to examine because of the application of the rules against cross-examination. Where in the House, as Mr. Sonnett was on our preliminary list, the fact that one time or another, now or then, I don't think even the House can claim that Mr. Sonnett's recount needs to be set against Mr. Deichert's about what happened on the morning of Monday, May 11th, and what happened on July 8th in that courtroom and how it was read. I cannot believe that Mr. Bryant doesn't think that information should come before this body, in the interest of justice and truth, whether we do it now or later.

Mr. SYNAR. Mr. Chairman, we will again describe for the committee, is that Mr. Sonnett is not listed on the——

The **Chairman**. Since there is no indication on the witness list that Mr. Sonnett is to be called by respondent in this, let's go ahead and see if there are any questions by Senators at this point.

Mr. **Rudman**. Mr. Chairman?

The **Chairman**. Senator Rudman.

Senator **Rudman**. I have a question for the Chair, not for the witness. Mr. Chairman, based on the prior precedent in the Claiborne trial—the chairman may not want to respond to this now, but I think both counsel for the managers and counsel for Judge Hastings ought to be aware of this—it seems to me that when the Senate takes this up as a body, there is a serious question that exists as to the evidence that has just been excluded by the chairman, and I wonder if the Chair has a view as to whether or not the Senate will consider that evidence if a member of this panel wishes it to consider that evidence, or whether it will be the position of the chairman of the committee and the vice chairman and counsel that that evidence will not be available to the Senate.

The **Chairman**. My understanding of the rules is that the Senate can override the committee on any evidentiary ruling and may just determine to do that when the matter is presented to them.

Senator **Rudman**. I think that is correct and, for that reason, I just want the record to note that, with the greatest respect for my good friends, the chairman and the vice chairman, I strenuously disagree with the ruling just made and would intend personally to make sure that the Senate could at some point consider that evidence.

The **Chairman**. We will note that.

Mr. Anderson, did you have a point to make?

Mr. **Anderson**. Obviously, I don't agree with Senator Rudman, but as an aid, my understanding of the rule was that all rulings of the Chair, whether in committee or in the presiding officer, are subject to challenge by a member, and that any member may call upon a vote to override the Chair, so that——

The **Chairman**. That is correct. We could have a vote of the committee on the issue, if you would wish at this point, Senator Rudman.

Senator **Rudman**. Mr. Chairman, you know, that occurred to me. We have a vote, I believe, now.

The **Chairman**. We do.

Senator **Rudman**. I think this matter has to be discussed. I won't get into argument right now of why I think the ruling is wrong. I think it is wrong, for a variety of reasons. I think this testimony to be critical and I'm not sure we ought to vote on it, in fairness to the Judge or to the managers at 5:05, with 13 minutes left. But it seems to me that we ought to discuss this.

Maybe a good way to get this thing cleared up procedurally is to have a vote here on the committee about it, after some discussion. Then, of course, if the Chair prevails and each member then still could move to the Senate, but at least there would be an expression of the committee as to how it felt. I am not familiar with that evidence, but it has been described by Representative Synar and I just believe it ought to be admitted. So, I will leave it to the Chair.

The **Chairman**. Let me ask, Mr. Sonnett, are you available to continue with testimony tomorrow morning, if——

Mr. SONNETT. Senator, I was really not sure that you would be able to get to me today, so I have made arrangements to stay overnight. If the committee wishes me back tomorrow, I will be happy to come back.

The CHAIRMAN. We would ask that you return tomorrow, if you would, at 9 o'clock.

Mr. BRYANT. Mr. Chairman?

The CHAIRMAN. Yes.

Mr. BRYANT. If I might interject here, Mr. Synar has difficulty with his schedule tomorrow morning at 9:00 o'clock and I would point out that if you reversed your ruling or the committee reversed it and took his testimony, even then this witness' testimony would not take very long, 10 or 15 minutes in terms of direct examination, and it would put Mr. Synar in a bit of a jam if you took him up again at 9 o'clock in the morning.

The CHAIRMAN. Representative Bryant, there is a limit to how many schedules we can try to accommodate. All Senators are going to be here at 9. We will have to proceed shortly after 9:00. I think, realistically, the committee will want to meet in closed session, just to deliberate amongst ourselves, for a few minutes, starting at 9, and then by 9:15 or 9:30, we would expect to go to the next witness. If there are questions by the committee of Mr. Sonnett, we would want to ask them at that time, regardless of how we determine to rule on this question. So, if Mr. Sonnett would be here——

Mr. SYNAR. Mr. Chairman, that fits my schedule perfectly. It was just that if we started exactly at 9:00.

The CHAIRMAN. Well, at 9:00, I would advise committee members, we will meet here at 9:00 and deliberate among ourselves on the question that Senator Rudman has raised, and we will plan to start with the witness, Mr. Sonnett, at 9:15 to 9:30.

The Senate is in the process of having a vote, so we will adjourn for the day at this time.

[Whereupon, at 5:08 p.m., the committee adjourned, to reconvene on Wednesday, July 12, 1989, at 9:00 a.m.]

IMPEACHMENT OF JUDGE ALCEE L. HASTINGS

WEDNESDAY, JULY 12, 1989

U.S. SENATE,
IMPEACHMENT TRIAL COMMITTEE,
Washington, DC.

The committee met, pursuant to notice, at 9:46 a.m., in room SH-216, Hart Senate Office Building, Hon. Jeff Bingaman, chairman of the committee, presiding.

Present: Senators Bingaman, Specter, Leahy, Durenberger, Pryor, Rudman, Bryan, Bond, Kerrey, Gorton, Lieberman, and Burns.

House Managers Present: Representatives Bryant, Conyers, Synar, Fish, and Gekas.

Counsel Present: Terence Anderson, counsel for Judge Hastings; Patricia Graham Williams, counsel for Judge Hastings; Robert S. Katz, counsel for Judge Hastings; Lewis Myers, Jr., counsel for Judge Hastings; Alan I. Baron, special counsel, House Impeachment Committee; Janice E. Cooper, Patricia Wynn, Lori E. Fields, assistant special counsel, House Impeachment Committee; Michael Davidson, Senate legal counsel; Elaine Stone, counsel, Senate Impeachment Trial Committee; Mark Klugheit, counsel, Senate Impeachment Trial Committee; and Bruce McBarnett, counsel, Senate Impeachment Trial Committee.

Staff Present: Anthony Harvey, administrator, Senate Impeachment Trial Committee; P. Casey McGannon, staff assistant, Senate Impeachment Trial Committee; and Isabel McVeigh, staff assistant, Senate Impeachment Trial Committee.

The CHAIRMAN. The committee will reconvene.

Yesterday when we adjourned, an issue being discussed was the ruling by the Chair on the question of whether the witness, Mr. Sonnett, at that time would be permitted to answer questions about a conversation that he had as the attorney with, I believe both of the Romanos. The ruling of the Chair was to sustain the objection that Mr. Anderson made. The committee has deliberated on this and determined that it would like to vote on that evidentiary ruling.

We would like at this time to call on the House managers first and then Mr. Anderson. We call on the House managers to make a proffer of evidence and to argue why that evidence should be admitted, and then call on Mr. Anderson to state and argue his objection to the admissibility of the evidence. And then we will have a vote.

Representative Synar, if you would go ahead with the proffer of evidence and an argument as to why the evidence should be admitted.

Mr. SYNAR. Mr. Chairman, it is the intention of the House—and this would be subject to a ruling of the Chair—to ask for a proffer to explain to the committee what we intend to get from Mr. Sonnett. Is that all right to allow that to be in, or do you want the hearsay rules by which we think——

The CHAIRMAN. We would like an explanation of what you would intend to offer and why you believe that evidence should be presented to the Senate.

Mr. SYNAR. Thank you, Mr. Chairman.

Mr. Chairman, the House expects to receive from Mr. Sonnett the following testimony: that his client, Thomas Romano, telephoned him on or about April 13, 1981, after returning from California with his brother Frank, and told their attorney Sonnett that on or about April 8, 1981, he received a telephone call from Phillip "Brother" Moscato, who told him that he had something important that he needed a fast decision on from them; and that he was in contact with someone he knew, was in contact with, that had been styled as a Washington bigshot; and that he felt certain that something could be done with the judge. Thomas Romano related to Mr. Sonnett that he told Mr. Moscato that he was not going to fly back to Miami on that kind of representation and did not think he wanted to get involved in anything like that.

If permitted to testify, we believe Mr. Sonnett will further testify that the Romanos knew that Mr. Moscato—because Mr. Moscato held a controlling interest in the corporation that had purchased the restaurant, the Sea Inn, from the Romanos, that Mr. Moscato was making mortgage payments to them on the restaurant. Mr. Sonnett would have further testified that he advised his clients that the contact should be reported to Mr. Deichert, the prosecutor in the case, and that they gave him permission to do so. Mr. Sonnett will testify that he did not do so immediately, and that by the time that Mr. Romano called on him again on April 16th of 1981, he had not talked to the prosecutor.

If permitted to testify, Mr. Sonnett will further testify that on April 16, 1981, Thomas Romano told him that since the last time they had spoken, on or about the 13th of April 1981, that he—Tom Romano—had gotten some information which led him to believe that Moscato had simply tried to rip him off and that there was nothing more to it. Romano had taken steps to ensure that Moscato would not try to do this again, and under these circumstances he told Mr. Sonnett that it is not something he thought Mr. Sonnett needed to report to Deichert, the prosecutor.

Mr. Sonnett agreed and dictated a memo for his file dated April 16, 1981, which was typed by his secretary. That memorandum, which has been identified by Mr. Sonnett yesterday in his testimony as Exhibit 26, summarized the conversation with Thomas Romano of that date and included subjects other than the contact with Mr. Moscato.

Mr. Chairman, as we expressed yesterday, we believe this testimony is critical. We believe that the committee and the Senators—unlike a jury where hearsay evidence could inflame that jury, we do not look at those same circumstances here. We also have an affidavit and a doctor's report which we will enter into the record if that is appropriate with respect to Mr. Moscato's inability to attend. As has already been established, the Romanos are deceased. But we believe this testimony is critical to the conspiracy case, and we believe it should be permitted.

The **CHAIRMAN**. Mr. Anderson, did you wish to——

The **VICE CHAIRMAN**. Mr. Chairman, may I just ask Mr. Synar——

The **CHAIRMAN**. Yes. Senator Specter.

The **VICE CHAIRMAN**. Congressman Synar, you said it twice. Why do you think this evidence is critical?

Mr. **SYNAR**. Well, I think it is critical for the very simple reason that it dates the contacts that were made up the chain from Mr. Dredge to Moscato, from Moscato to the Romanos, and verified through their lawyer's contact.

The **VICE CHAIRMAN**. And why is the date critical? I understand your theory of the case that it corroborates the date, placing it in April. But why is that critical to the House's presentation?

Mr. **SYNAR**. Well, as we learned from the Dredge testimony yesterday, those contacts between Mr. Dredge and Mr. Borders began in March, and we believe these dates are important in order to establish the conspiracy with those dates included.

The **CHAIRMAN**. Mr. Anderson, did you wish to make an argument or repeat your arguments against the admissibility of the evidence?

Mr. **ANDERSON**. I think I probably should for the record, Mr. Chairman.

The **CHAIRMAN**. If you would like to take the podium, you can do so.

Mr. **ANDERSON**. It might be more convenient.

Mr. Chairman and members of the committee, one, I do not think the evidence bears what they would like. I have no questions and, indeed, hope the committee will accept Mr. Sonnett's credibility. His report is accurate. There must have been a call; he knew Tom Romano; that call must have taken place. Mr. Romano's credibility, if one credits Mr. Deichert at all, is certainly open to question as to why he would be reporting this to his lawyer—some possibility that they were setting up something of their own, they have been identified as criminal persons. I do not take that too seriously, but the Romanos would have been available to testify had the Government taken any of this seriously at all in 1983.

One aspect of this is it unfairly prejudices the defendant because the Romanos are now dead, and that is no longer a possibility. The second level of hearsay is Mr. Romano is reporting to Mr. Sonnett a conversation he had with a person named Brother Moscato. Brother Moscato's credibility is, at best, dubious. If this is permitted, I think that Mr. Sonnett will have his own views to express on the credibility of Mr. Moscato.

Mr. Moscato may or may not today be too ill to testify. That, it seems to me, has not been adequately established. But the point is he was available to Mr. Weingarten; he was interviewed by the FBI; he was available to Mr. Doar; he could have been called before the Investigating Committee. I cannot see conceivably how—I understand the Senators decided in principle the fact that this is coming before it more than five years after the trial does not bar a trial. I do not think the House managers should be the beneficiaries or the judge should bear the burdens of delays by simply saying, well, we will ignore the hearsay rule now because we want the evidence before us.

You then have, even in Mr. Synar's presentation, a real ambiguity. What was the source of the information Mr. Moscato was reporting. Is he talking about a conversation with Willie Dara? Is he talking about a conversation with William Dredge? Or is there someone else involved in this conversation? So you then have as your next level of hearsay, Mr. Moscato is purportedly reporting to Mr. Romano a conversation he had with an unidentified individual. That unidentified individual, at least in the House's theory, is reporting on a conversation he had with William Borders.

If Mr. Synar is correct that the unidentified individual is Mr. Dredge, I would hope that no one who sat through the somewhat tedious cross-examination can have missed the point that Mr. Dredge approaches the level of a sociopath in that he will tell whatever story on any occasion suits his personal interest. The notion that the recount of what Dredge said should be credited for the truth of what Dredge said through the hearsay rule strikes me as incredible. You then have Mr. Dredge is presumably reporting a conversation by Mr. Borders. You have that then.

Something was going on here, and this dates something. Whether it was Dredge's first approach, second approach, whether it was an approach from someone else, it seems to me, is something you cannot tell. If this area is opened, you will, I think, learn that there was a further conversation between Mr. Moscato and the Romanos which indicates there was a different deal on the table. I just think that is too murky.

Now, the hearsay rule is something which applies and which the Senate, as well as the House, has approved in the Federal Rules of Evidence. It does not just apply—it is not a jury trial rule. It is a principle of fundamental fairness. It is a principle which, if you went into—even though the technical rules of evidence perhaps should not apply, I take it the principles of scientific inquiry for truth do apply. No scientist would report to you the results of an experiment which had not been validated in accordance with the norms establishing reliability. In a judicial proceeding, the norms establishing reliability are cross-examination.

We have carved out numerous exceptions to the hearsay rule where we think there is some substitute that gives us indicia of reliability comparable to those that would be provided by cross-examination or, alternatively, such as the case of business records, where there are other purposes. People run their businesses, and they rely on computer records. They cannot afford to let them be false, so we let them in. True indicia, where either cross-examination would be largely meaningless or where there are other strong indicia of reliability, so strong that cross-examination could not help.

Should I have the opportunity to cross-examine Tom Romano about the whole scheme and whatever else he knew in order to let them come into its context? Should I have the opportunity to cross-examine Phillip Moscato and find out the exact extent of his knowledge and what really was going on here? Yes. Especially in light of Mr. Dredge's testimony. I should have those opportunities. This is not reliable evidence.

I would emphasize—emphasize—when we are talking about the interest of justice, exceptions to the hearsay rule are permissive not mandatory. The mere fact you could squeak this into an exception still leaves it may be admitted, and it comes back to a principle which is a principle found in logic, in science, as well as in trials.

Does the probative value of the evidence outweigh the unfair prejudicial effect? We are nine years after the fact. The Senate has an honorable tradition, extending almost 200 years, of applying the rule against hearsay in impeachment trials. This is not an instance to depart from precedent. This is not an instance to work an unfair prejudice on this man because these participates have died or are unavailable to bootstrap the credibility of a person who you will have to assess but who will tell whatever version of the story suits him on the occasion.

I submit that 1989 in the impeachment of Hastings should not be where the Senate departs from a tradition that has lasted that long. This is not fair.

The **Chairman**. Representative Synar, you indicated in your statement that the House has an affidavit regarding the availability of Mr. Moscato as a witness. Is that correct?

Mr. **Synar**. That is correct, Mr. Chairman.

The **Chairman**. Do you wish to offer that at this point? Is that something that counsel for Mr. Hastings has seen?

Mr. **Anderson**. I think I have seen it.

The **Chairman**. Would you represent again to the committee what that affidavit purports to establish?

Mr. **Synar**. Yes, Mr. Chairman. This is an affidavit from Mr. Moscato's attorney, Mr. Michael S. Pasano. This is verification that he has been unable to make his court appearance in the Federal district in the Florida area because of his health, and it is accompanied with his doctor's report.

The **Chairman**. Does it state whether he is available to participate in this proceeding?

Mr. **Synar**. It says, "Ms. Cooper, we have been asked"—if I could, Mr. Chairman, it is dated June 28th—"for information regarding Mr. Moscato's availability to testify at trial in the above matter. Be advised that Mr. Moscato's health is such that he is not available to testify." And then they attach the materials with respect to the doctor's report.

The **Chairman**. Is there objection to the introduction of the affidavit?

Mr. **Anderson**. Yes, Your Honor. The lawyers for Mr. Moscato, coincidentally, I assume, are Zuckerman, Spaeder, who are lawyers, it seems, for everyone in these proceedings. This is a summary, a conclusory account, with a two-paragraph medical report accompanied by a motion for a continuance given to a Federal court.

Now, I assume the court can accommodate parties' interests and continue cases and take them on different grounds than one can accommodate in an impeachment. I do not know whether Mr. Moscato is sick. I do not have any reason to question this, but it is conclusory.

If this is going to be the predicate for establishing a witness as unavailable, I think you will recall in the Ritter proceeding that when similar claims were made the Senate sent out a doctor to find out.

A conclusory assertion by the lawyer or the witness that they have filed a motion for a continuance based upon a one-paragraph conclusory report by a doctor which does not lay the predicate for what Mr. Moscato's real problems are strikes me as a strange way for the Senate to go about establishing unavailability as a witness.

Mr. **Synar**. Mr. Chairman, if I could respond.

The **Chairman**. Mr. Synar.

Mr. **Synar**. First of all, let us make it very clear that the judge has granted that continuance in that Federal court. Secondly, this lawyer has every incentive by which to make sure that that is valid because he could be held in contempt of court if the case does not bear out. We think this is valid and well within the rule.

The **Chairman**. The affidavit will be admitted into evidence.

[The document referred to was marked House Exhibit No. 219 and was received in evidence.]

The **Chairman**. At this point the committee will vote on the question of whether to sustain the objection that counsel for Judge Hastings has made to the testimony by Mr. Sonnett as intended by the House managers and as summarized in the proffer of evidence. If I understand the vote, a vote to sustain would, of course, preclude the evidence from coming in. A vote to overrule the objection would permit the evidence, the testimony to be taken.

The clerk will call the roll.

Senator **Rudman**. Mr. Chairman, what is the question? Would you state the question? Is the question sustain or overrule? Of course, that affects the vote.

The **Chairman**. The question is whether to sustain the objection by Mr. Anderson, the objection being to the introduction of the evidence. So if you vote to sustain Mr. Anderson's objection, you would vote to exclude the evidence. If you vote to overrule Mr. Anderson's objection——

Mr. **Anderson**. May I be heard just briefly? My understanding of the precedent is different, Mr. Chairman. My understanding is the chair has ruled the evidence is excluded. The question is whether the chair should be sustained or overruled. I think in the practice of impeachments—and I just bring this to the chair's attention as a matter of practice in impeachments—you have ruled. The committee may overrule you, but your authority is to rule——

The **Chairman**. Then the question is whether to sustain or overrule the chair's decision.

Senator **Rudman**. An aye vote would be to sustain, and a no vote would be to overrule. Am I correct?

The **Chairman**. That is correct.

Senator **Rudman**. Thank you.

The **Chairman**. Would the clerk call the roll?

ROLL CALL VOTE RE: WHETHER TO SUSTAIN THE CHAIR'S RULING ON ADMISSION OF NEAL SONNETT'S TESTIMONY ABOUT HIS APRIL 13, 1981, CONVERSATION WITH THOMAS ROMANO

Mr. HARVEY. Mr. Leahy.

Senator LEAHY. No.

Mr. HARVEY. Mr. Pryor.

Senator PRYOR. Temporarily abstain.

Mr. HARVEY. Mr. Bryan.

Senator BRYAN. No.

Mr. HARVEY. Mr. Kerrey.

Senator KERREY. No.

Mr. HARVEY. Mr. Lieberman.

Senator LIEBERMAN. No.

Mr. HARVEY. Mr. Durenberger.

[No response.]

Mr. HARVEY. Mr. Rudman.

Senator RUDMAN. No.

Mr. HARVEY. Mr. Bond.

Senator BOND. No.

Mr. HARVEY. Mr. Gorton.

[No response.]

Mr. HARVEY. Mr. Burns.

Senator BURNS. No.

Mr. HARVEY. Mr. Specter.

The Vice CHAIRMAN. Aye.

Mr. HARVEY. Mr. Bingaman.

The CHAIRMAN. Aye. And I have a proxy from Senator Gorton which would be no.

Senator PRYOR. Mr. Chairman, I would like to vote no.

The Vice CHAIRMAN. Mr. Chairman?

The CHAIRMAN. Let the clerk announce the vote.

Mr. HARVEY. Nine nays and two yeas.

The CHAIRMAN. Does Senator Specter wish to make a statement explaining his vote at this point?

The VICE CHAIRMAN. Well, Mr. Chairman, I would do that, and I would make a comment on the procedures which have been followed here.

My view is that the evidence ought to be excluded for a number of reasons. Preliminarily, I do not believe that there has been a showing of the unavailability of Mr. Moscato to be a witness. There is a letter submitted by a Dr. Thomas Noto dated March 14, 1989, which says, "To Whom It May Concern: This letter is to verify the fact that the above-named patient is not medically fit to stand trial at this time due to his condition." It then proceeds to describe a medical condition, angina pectoris, but I do not believe that the issue of standing trial is the same as appearing as a witness in this proceeding. And even on the capacity to stand trial, they are very conclusory statements.

But I would exclude this testimony for a much more fundamental reason, and that is that the witness is going to be called upon to testify as to several layers of hearsay. Mr. Sonnett is going to be asked to testify about what his client, Mr. Romano, told him. Mr. Romano will be telling Mr. Sonnett about what Mr. Moscato told

Mr. Romano. Mr. Moscato will be testifying about what someone told him as to some Washington bigshot. And it is not plain on the proffer whether it is the Washington bigshot who talked to Mr. Moscato or somebody else who talked about a so-called Washington bigshot. So you have multiple levels of hearsay where a Washington bigshot tells something to Mr. Moscato who tells something to Mr. Romano who tells it to Mr. Sonnett, who is going to be called upon to testify in this proceeding.

When Mr. Sonnett takes the stand, we will have an ample opportunity to ask him about the sequence about Mr. Romano's having received the information at an earlier date than April 14th when the original conversation occurred between Mr. Romano and Mr. Sonnett, according to Mr. Sonnett's testimony in a two-day-later memorandum here.

It is certainly true that a Senate panel is not a jury. But we, Senators who sit on this panel, are not immune from having matters in our minds, and we do not have the perfect capability, as no human has, to separate them out and compartmentalize them and make any guarantee against prejudice. The rules of evidence have been established over a very long period of common law practice, and my own view, having had some experience in the practice of law, is to give very great weight to what these decades and centuries of practice have had to say about the rules of evidence.

It is true that Rule 24 gives substantial latitude on the admissibility of hearsay evidence. I believe that this panel has a very heavy duty, a very heavy responsibility as to fairness and as to the appearance of fairness to the respondent, Judge Hastings, in this case. Now, it is true that in the context of this ruling we are not necessarily saying what we will consider, even those who have voted to overrule the ruling of the chairman. And as I think others will explain, and we had a very protracted discussion about this in our own conference room, that those who wish the evidence admitted or the so-called evidence—I would not dignify it to that extent, but to have the testimony admitted—do so because of their concern that the full Senate would have the availability of this information for the Senate's proceedings, because we 12 do not decide this matter. The 100 decide the matter.

The House has to go to vote, so I will be even briefer than I had anticipated. And I am trying to be brief as it is.

But the basis for the votes to overrule the Chair turn on the availability of this record for the Senate, and I think it is fair to say that even among those, at least some, who want to overrule the chair, that they would not accord this evidence any weight. My own view, strongly felt, is that it is so remote and that the realities are that the Senate relies to a substantial extent on this body, and its palpable inadmissibility in a courtroom is so extreme that even given the different nature of our proceeding here, and the importance of fairness and the appearance of fairness, that I would sustain the ruling of the chair.

And I will say that speaking for this Senator, I would give absolutely no weight in my own deliberation, to the extent I can compartmentalize it, and would so urge my colleagues when the moment comes for floor debate.

Thank you, Mr. Chairman.

The **CHAIRMAN**. Thank you.

Senator **RUDMAN**. Mr. Chairman?

The **CHAIRMAN**. Could I just ask this? The House has a vote in progress. Would it be acceptable to the House managers for us to continue with any statements of explanation of votes while you are gone with your counsel here representing you? And then if you are not returned by the time we have completed that, we have also scheduled to hear argument, both by Mr. Anderson and by the Department of Justice, on the question of the issuance of a subpoena *duces tecum*, and perhaps begin with that with your counsel present?

Mr. **BRYANT**. That is acceptable, Mr. Chairman.

The **CHAIRMAN**. If the House would go ahead and vote.

Senator Rudman, did you wish to explain your vote?

Senator **RUDMAN**. Mr. Chairman, thank you very much. I do because I raised the original objection.

Let me state clearly that much of what Senator Specter says I do not disagree with. However, this panel has some obligation to make available to the Senate during its floor proceedings, in which there will be full participation by the parties, evidence that has some relevancy and can be given some weight. It well may be that after hearing this evidence we may consider it rank hearsay in all respects.

I would say, however, based on the proffer, that there is one portion of the evidence that under 803.24, even if we were to interpret those rules strictly, would probably be considered trustworthy, and that would be a telephone call to a lawyer from a client virtually contemporaneous with the procedures in the court with no reason whatsoever that is even imaginable as to why such a story would be told to counsel who was representing a man—two brothers—in a very serious proceeding involving both their liberty and their treasure. So that well might be considered to be very reliable. The rest of it may be considered rank hearsay.

My vote is based on my belief that unless there is absolutely no relevance and no conceivable weight to the evidence, we ought to at least report it to the Senate. It would be my suggestion to the chairman—and it will be when we draft our report—that this evidence be clearly identified as hearsay, the circumstances under which it was received. This, after all, is not a jury that must be protected from the inflammatory aspects of hearsay evidence. This will be tried by the United States Senate who, I believe, in fairness to the respondent here, know the difference between hearsay and direct testimony. So I do not believe we do violence to Judge Hastings, his rights, but I think we do give the Senate an opportunity to examine carefully evidence that was before us and assess such weight as they may, in their individual judgment, reach.

Senator **LEAHY**. Mr. Chairman?

The **CHAIRMAN**. Senator Leahy.

Senator **LEAHY**. Mr. Chairman, I have to strongly agree with Senator Rudman on that. We have a situation here where a proffer of proof has been made. There have been newspaper articles suggesting what is available and what is not. We are going to be asked by our colleagues on this. As I said earlier today in another context, this committee is made up—we have four former governors, four former attorneys general, a couple former district attorneys. I think that we understand the probative value of such issues. I think we can suggest to the other Senators what we put on it. We may put nothing on it.

But we have heard hearsay here already. We have heard a witness yesterday who, if ever there is a person where people are going to ask us to go beyond the transcript and say what we think of his credibility, it is going to be on that witness. And we may have some varying ideas of his credibility. That is the same issue here.

It is a troublesome case to begin with when you are dealing with an issue, an impeachment, where there has been an acquittal and a jury trial. And I think that we have to bring these various issues in and have as much into the record seen by the 12 of us, given our weight to it. If I was not on this panel—and Lord knows I tried to avoid the service on this panel. If I was not on this panel, just as an individual Senator, one of the other 88 when the matter came before us, I would be asking you and everybody else just what weight you gave to some of these issues and whether on things I read in the paper or anywhere else, whether you had considered them and looked at them and given weight to them.

In my courtroom practice, I remember sitting before judges and saying let us rule this out, rule that out, and go on the strict rules of evidence. I think we are in an entirely different situation here. I think we can go by somewhat different rules.

Mr. Anderson, I would say this: I realize your concerns, and the argument you made was a very strong and good one on the rules of evidence, but I think you also have 12 people who are going to be very, very careful to make sure the rights of your client are protected in listening to it.

ARGUMENT RE: RESPONDENT'S REQUEST FOR ISSUANCE OF SUBPOENAS DUCES TECUM

The **Chairman**. We now have a request by the respondent for issuance of subpoenas *duces tecum* to the Department of Justice and the Federal Bureau of Investigation. I would suggest that now would be an appropriate time for the respondent to present his argument as to why the committee should do that. And then we have a representative here, a Mr. Jim Cole, from the Department of Justice, who would like to respond to that argument. And then before the open session this afternoon, the committee will make a determination on that.

Mr. Anderson?

Mr. **Anderson**. Thank you, Mr. Chairman.

Just as a procedural point, I think there may have been a breakdown in communication. Until Mr. Cole came in this morning, I was not aware that this issue was on the table. I am totally comfortable arguing it now, but in terms of the agenda, getting over to the back room or something to give us whatever advance, we would appreciate it.

I think I have in my subpoena cut down very substantially from what I thought I was entitled to in my letter. Essentially, I am asking for the prosecution memo by Robert Richter and Reid Weingarten, any status reports concerning the Borders-Hastings prosecution that they prepared; and I am also asking for the Allen file which was identified by Mr. Allen in his testimony for the Investigating Committee as something so crucial that Judge Kaufman instructed him to send his notes down to the departmental archives for preservation.

Mr. Richter is on the House managers' list. Mr. Weingarten and Mr. Allen are on my list. These documents are now prior written statements by persons who are witnesses. As I understand the rules, certainly under civil discovery, I would have them. If I understand the rules under criminal discovery, which I recognize the Senate does not view this as a criminal proceeding, I only say that under the most restricted version of what a party is entitled to by way of discovery, these are Jenks Act materials now. These are materials necessary for the cross-examination of people who will appear as witnesses. They are prior statements by those witnesses that bear upon this case. I cannot conceive—there are sometimes claims of executive privilege, such as were asserted in *United States* v. *Nixon* of the highest order, and the courts have generally tended to rule that those claims, absent a specific and compelling, as opposed to a generalized assertion of privilege, unless there is a specific, compelling interest bearing upon national security or some other reason, that the need that every man's evidence shall be produced in the courts, this evidence should be produced.

The committee, I think by its most recent ruling and some of its prior rulings, has suggested that virtually everything that bears upon this case should be before the Senate that we should trust the discretion of the Senators to sift the irrelevant from the chaff. This is a part of that everything. We have asked the Justice Department to produce it. I can think of no conceivable reason why files that are going back to 1983 and before, are that old, could have any bearing upon the security of our Nation or any other reason, specific reason, which would justify their non-production.

I think we have submitted a very narrow request with our subpoena. I would ask the committee to enforce it.

The CHAIRMAN. Is Mr. Cole here representing the Department of Justice?

Mr. COLE. Yes, sir, Mr. Chairman.

The CHAIRMAN. Would you please come forward and address the committee on this issue?

Mr. COLE. Thank you, Mr. Chairman.

Mr. Anderson spoke as to the fairness, and I believe that his comments left somewhat of an impression that none of the documents whatsoever have been turned over. That is not exactly true.

In his first request, number one, he asked for the prosecution memorandum. A copy was turned over to the Senate committee by the Justice Department in a redacted form. The portions which were redacted were traditional complete work product types of information. It was the attorneys' thought process about the case. It was their impressions and mental notes about how they were going to prove the case. It was their candid discussion of their evidence. It was not a discussion of the facts of the case *per se*. The portion that was turned over contained the facts. It was merely what has traditionally and always been considered attorney work product and exempt from discovery and exempt from production.

Usually, the Department does not turn over prosecution memos at all for the simple reason that they are almost all attorney work product. They are the decisional forums that we use to have candid internal discussions of how we are going to proceed and to let other people know how we feel about a case. We in this case made somewhat of an exception on the prosecution memo and turned over all but the most rank attorney work product sections. We were very careful and selective in what we did and did not cut out, and there are even some references that we did not cut out and that we did not redact which could be considered attorney work product because they dealt with issues which Mr. Anderson had raised, and we felt just out of an abundance of fairness, since Mr. Anderson had raised those issues—concerning the leak investigation, for example—that we left that small portion of the discussion in there.

The Department would request that a subpoena not issued for the unredacted portion of it just because it is work product. And there has never been any rule of law that I have been able to come up with which would consider this discoverable absent it being exculpatory. And there is nothing exculpatory in the material that was redacted, and Mr. Anderson has neither made an argument that it is or made any showing that it is exculpatory.

So in the spirit of the rules of evidence which Mr. Anderson has brought to the committee's attention today, we would say that those would not permit any discovery of the redacted portions.

The memorandum which was covered by item number 2 of Mr. Anderson's request, it is just a general request for all memoranda. Other than the prosecution memorandum, I am at this time unaware of what other memoranda Mr. Anderson is referring to specifically. Concerning the investigation, prosecution, trial, post-trial proceedings, a number of memoranda concerning the whole case have been turned over to the Senate for review. But absent a more specific request from Mr. Anderson, it would be hard to really respond any more specifically. We have turned over what we felt we could at this time, and I know of no other documents which would fall within that.

As to the file maintained by Steven Allen, I have been making inquiry since I have seen this request and frankly have been unable to locate any such file at the present time in the possession of the Justice Department. I have not gone to the archives because, for the first time this morning in talking to Mr. Anderson, he said it has gone to the archives. And that is what we understand. The only reference that I am familiar with concerning such a file is an order by the court, I believe, sealing the file and making sure that it would be preserved if anybody should need it in the future. Beyond that, I am at present unaware and have been unable to discover the whereabouts of any such file to date.

Finally, request number 4 to the Department of Justice which is the memorandum dated May 11, 1982, concerning the leak investigation. Mr. Anderson has a redacted copy of that memorandum, and all that has been redacted are names of individuals who were mentioned in that that were Bureau agents. The reason for this is that the Bureau thought that rightfully so, particularly in view of the fact that there was no finding of anyone being culpable or responsible for the leak in this matter, that in order to protect the privacy interests from what was an administrative inquiry ultimately of this matter, that their rules require that they block that out.

They did, however, agree—and it was made known to Mr. Anderson—that if any of the names that were blocked out were witnesses in this hearing, they would not redact those names. So the first reason which Mr. Anderson cites is non-existent in this instance. Because if a person were a witness in this matter and they were mentioned in that memo, their name would not have been redacted.

Finally, Mr. Anderson's argument on that point is that he wants to be able to compare the investigation which was done by the Federal Bureau of Investigation of that leak investigation to the investigation that was done concerning Judge Hastings' leak of information of the wiretap to Mayor Clark. I would submit to the committee that that is an irrelevancy for this matter. The issue is not whether or not one investigation was more thorough or less thorough than another. The issue before the committee, I would respectfully submit, is whether or not a specific article against Judge Hastings is supported by evidence or not supported by evidence. I would submit to the committee respectfully that the memoranda will shed no light whatsoever on that.

Then there are the two documents that are requested from the FBI. One is a teletype. I believe that a redacted version of that teletype has been turned over. The sections which were redacted——

The CHAIRMAN. Let me interrupt for just a moment.

Mr. COLE. Certainly.

The CHAIRMAN. I would just advise all counsel that when this argument is over, we would proceed to complete the testimony of Mr. Sonnett.

Go ahead, please.

Mr. COLE. Thank you, Mr. Chairman.

The sections which were redacted from the teletype have nothing to do with the case that is talked about in the teletype. It is an unrelated matter. It is an ongoing investigation as far as I know, and it is an unrelated Title III which cannot be disclosed at this time without further court orders. So in that regard it was redacted, and I submit to the committee it is irrelevant. And in any event, without a court order, we would not be able to turn that information over.

Finally, there is the memo of July 29, 1982, which is requested by Mr. Anderson. A two-page summary of that has been provided to the committee by the FBI. I believe that the full document has been reviewed *in camera* by the committee's counsel. This document does not in any way concern the particulars or the results or the evidence that was adduced during the leak investigation, but was merely a recounting internally in the FBI of the procedures employed and how better an investigation may be done in the future. It was withheld until the investigation was over because it did not want to have any impact or anything to do with the investigation. It was only a document designed to help the FBI in future situations of a similar nature to conduct a better investigation that would not involve as much offense, shall we say, to agents and employees of the FBI.

In that regard, I would also state that it has nothing to do with the issue before this committee and would be irrelevant. And in any event, a sufficient amount of information provided would serve whatever purposes the committee might have.

The CHAIRMAN. As I indicated earlier, we will deliberate on the issues that have been argued here and give a decision to counsel after our noon recess.

The VICE CHAIRMAN. Mr. Chairman, I have one question.

The CHAIRMAN. Senator Specter.

The VICE CHAIRMAN. Do you have any problem with the request for a search of the archives of the file maintained by former Assistant U.S. Attorney Steven Allen?

Mr. COLE. No, Mr. Vice Chairman. I would have no problem making inquiry to the archives.

The VICE CHAIRMAN. Because that does appear to raise a relevant inquiry as to the credibility of Mr. Dredge.

Mr. COLE. I would have no problem searching the archives. It was the first I had heard today from Mr. Anderson, and that is the only reason why I had not previously made inquiry into the archives. But I will cause one to be done.

The VICE CHAIRMAN. Thank you.

The CHAIRMAN. We are also informed that there are unredacted copies of various of these documents which the committee could review *in camera*. Is that correct?

Mr. COLE. There are, other than the teletype. The reason that I do not have any unredacted copies of the teletype is because there is information that we cannot release without a court order at this point, I would state, even to the committee. Until we have further judicial approval, the items that are concerned there are sealed, are under court order, and I have just felt that it would be improper to disclose them at this time. I do have unredacted copies of the other documents which I would make available.

The CHAIRMAN. Well, the ones that are not subject to court order, if you would make those available to counsel for the committee, we would appreciate it.

Mr. COLE. Certainly.

The CHAIRMAN. Mr. Anderson, did you need to make additional argument on this?

Mr. ANDERSON. Just a couple of points.

I am comfortable with the committee counsel reviewing the total package and doing the redacting necessary to protect legitimate interests. Although views may differ, I am very uncomfortable with redactions that are done by the FBI. The committee has in its motion *in limine,* at least it recognized in some degree, because of the fairly massive number of governmental personnel from the FBI and the Justice Department who are witnesses, the credibility of what they did is at issue. The lapse of time makes it possible for altered recollections.

The work product claim I would like to address briefly. This is no longer a case in which attorneys for the Government or the Justice Department are prosecuting Judge Hastings. That is over. Attorneys for the Justice Department are now witnesses on both sides, and a generalized view that there ought to be a generalized privilege to protect the decisional process within the Justice Department with respect to these memoranda I submit cannot outweigh—is not sufficiently particularized to justify withholding any of that material from the respondent in this case where these two people will be witnesses subject to examination.

Let me, both for Mr. Cole's aid and mine, simply tell the committee the source of my information. Mr. Allen's file was first identified by Mr. Allen in his testimony before the Investigating Committee. Mr. Doar was kind enough to share with me, which I would be happy to supply a copy to Mr. Cole of, an interview memorandum, a memorandum of an interview that was done with Mr. Allen which contains some additional particulars. I think the file ought to be found. Perhaps Mr. Allen when he comes forward can give us additional information. But I will give Mr. Cole a copy of Mr. Doar's memoranda to aid him and would be happy to provide it. I do not know where the darn thing is. I just know that Mr. Allen has repeatedly said that it exists and that both he and Judge Kaufman thought it ought to be preserved for future use. The future is now.

Thank you.

Mr. Cole. If I may, Mr. Chairman, I would like to briefly respond.

The Chairman. Very briefly.

Mr. Cole. Very briefly.

The Chairman. We have had plenty of argument on this. Go ahead.

Mr. Cole. The work product privilege is not something designed to protect a particular piece of litigation. It is something that would allow an attorney to be very candid and open in his thoughts, knowing that at a later time he will not have to disclose the work product. It is that reason why I would resist the work product production at this time, so that it can encourage attorneys to be honest and candid in their written work without the fear of later disclosure at any time in any forum.

Thank you.

The Chairman. Thank you very much.

Now we will continue with the testimony of Mr. Sonnett. If he would re-take the stand and if Representative Synar would continue with that direct examination.

The oath has already been administered, and we will not go through that again.

TESTIMONY OF NEAL SONNETT (continued)

DIRECT EXAMINATION (continued)

Mr. Synar. Thank you, Mr. Chairman.

Mr. Sonnett, yesterday we asked you certain questions regarding a telephone call you received from your client, Thomas Romano, following his stay in California. Now, to put the subject into context again, let me ask you again: When did you receive that first call in question?

Mr. Sonnett. To the best of my knowledge, the telephone call was received on or about April 13, 1981.

Mr. SYNAR. And how did you recall the date of that call?

Mr. SONNETT. We tried to piece the date together later by looking at memoranda in my file and looking at travel records, hotel records, that Tom and Frank Romano had.

Mr. SYNAR. And are those hotel records the document that yesterday we identified as House Exhibit 26?

Mr. SONNETT. That is correct, sir.

Mr. SYNAR. And how did those records help you recall when Tom Romano called you?

Mr. SONNETT. Well, we put together the date that they left California. They called me when they returned from California to Miami, and the check-out time for the last date reflected on the hotel bill was April 11th. And by looking at that plus the date of my subsequent memorandum, which was April 16th, it was our view that the telephone call was most likely made on April 13th. It could have been April 14th, but it was probably made either that Monday or Tuesday.

Mr. SYNAR. Now, Mr. Sonnett, the April 16, 1981, memorandum you referred to earlier, was that the document that was shown to you yesterday and marked for identification as House Exhibit 25?

Mr. SONNETT. Yes, sir.

Mr. SYNAR. And was that memorandum prepared within a few days of your initial call from Tom Romano?

Mr. SONNETT. Yes, sir, it was.

Mr. SYNAR. Now, as you testified yesterday, was that memorandum prepared on the same day you received the follow-up call from Mr. Tom Romano on the same subject?

Mr. SONNETT. It was dictated the same day, and the memorandum would indicate that it was also typed the same day by one of the secretaries in my office.

Mr. SYNAR. All right. Without going into the details of that call on April 13, 1981, did you counsel Mr. Romano as to what he should do as a result of the information he was relating to you?

Mr. SONNETT. Yes, sir. I asked his permission for me to take action.

Mr. SYNAR. And what was your advice?

Mr. SONNETT. I advised him that the contact should be reported to the Government and that he should give me permission to call Mr. Deichert.

Mr. SYNAR. And that is Mr. Deichert, the prosecutor in the case?

Mr. SONNETT. Yes.

Mr. SYNAR. And did you do so?

Mr. SONNETT. No, I did not.

Mr. SYNAR. Did the call from Mr. Romano on April 16th cause you not to report the subject of the earlier call of April 13th to Mr. Deichert?

Mr. SONNETT. Yes. When Tom and Frank called me on the first occasion, which we believe to be the 13th, they reported the contact to me, and they also indicated that they believed that it was either a scam or a setup. That is, either Mr. Moscato was trying to extort money from them or perhaps had been sent in as kind of an undercover Government agent. They did not believe that it was a legitimate contact, and they told me so.

I told them that under any theory the matter should be reported to the Government, whether it was a legitimate contact or a setup or a scam, and they gave me permission to do that. When I talked to them on April 16th, they told me that they really felt that it was nothing more than a scam, that they had taken measures by talking to Moscato to make sure that he would leave them alone, that they just did not see—they asked me if I had talked to Mr. Deichert yet, and I had been tied up in other things for a couple of days and had not talked to him yet. And they said, "If you have not talked to him, do not bother. It is really not worth starting because we just think that it has gone away and it is not going to come back to haunt us any more."

Mr. SYNAR. Not to be redundant, let us go through that again. Now, what was the general nature of the subject discussed between you and Mr. Romano on or about April 13, 1981?

Mr. SONNETT. The nature of the conversation——

Mr. SYNAR. The first conversation.

Mr. SONNETT. The first conversation concerned a contact made to Mr. Tom Romano by Phillip Moscato.

Mr. SYNAR. Who has been known as "Brother" previous to this?

Mr. SONNETT. Yes. I knew him. They described him to me as "Brother" Moscato. That is what they knew him as, or at least the way they related it to me. Brother Moscato had been a principal in a corporation that had bought their restaurant, so they had ongoing business dealings with him that were not terribly pleasant because the corporation was consistently late with mortgage payments. So I had heard the name before.

Tom told me that Moscato had called him——

Mr. SYNAR. On what date did he say that he had been called?

Mr. SONNETT. Well, I think they believed that the date probably was around the 8th or 9th, as I recall it.

Mr. SYNAR. Was he called when he was in California?

Mr. SONNETT. He was called in California by Moscato who said that he needed to get a fast decision on something, that—and Tom was never really clear on this—either Moscato knew or knew someone who knew a person that he described as a Washington bigshot, and he said something could be done with the judge.

Tom's response was skeptical—his response to Moscato, that is—indicated he did not want to or was not inclined to fly back home for that kind of an offer. He and Frank dismissed it at first and, as they were flying back from California to Miami, began to talk about it again, and that is when they decided that they should consult me about it.

Mr. SYNAR. All right. So that was the extent of the first call to you on approximately the April 13th date?

Mr. SONNETT. It was just a description of the contact made to them by Brother Moscato.

Mr. SYNAR. All right. Now, what did Tom Romano tell you on the second conversation of April 16, 1981?

Mr. SONNETT. That conversation, which is memorialized in my memorandum, merely was Tom telling me that they had determined that it was a scam or a ripoff, that they did not see—if I had not talked to Mr. Deichert, they did not see any reason for me to do that. And I told them that I would not, that I would simply dictate a memorandum to my file so that I had some record of the matter and leave it there.

Mr. **Synar**. Mr. Chairman, as we did yesterday, we identified Exhibit No. 25 as that memorandum. At this time, the House would ask this to be admitted into the record.

The **Chairman**. Is there objection?

Mr. **Anderson**. I think the objection has been made and ruled upon. It is being introduced over objection.

The **Chairman**. The exhibit will be introduced; it will be admitted.

[The document referred to was marked House Exhibit No. 25 and was received in evidence.]

Mr. **Synar**. Mr. Sonnett, would you read aloud the first paragraph of that exhibit?

Mr. **Sonnett**. Yes, sir. This is a memorandum dated April 16, 1981. It says, "On Thursday, 4/16/81, Tom Romano called me regarding the previous telephone conversation he had had with Brother Moscato. He told me he was able to determine that the Government was not involved and that it was merely an attempt by Moscato to set him up to rip him off of some money. He indicated that he was satisfied that Moscato would not make such an attempt again and that under all of the circumstances he did not feel it necessary any longer to contact the Government with respect to this information. I had not yet been able to reach Deichert on this matter, so no Government official had as yet been informed. I told Romano that I would not make any further attempts to contact Deichert with regard to this matter but would merely memo my file accordingly."

Mr. **Synar**. Thank you, Mr. Sonnett.

Now, did the Romanos pursue the offer that Moscato had conveyed to them on or about April 8th?

Mr. **Sonnett**. No, quite the contrary. They made sure that Moscato was informed that they were not interested in discussing the matter further with him at all.

Mr. **Synar**. Mr. Chairman, that concludes the questions by the House managers.

The **Chairman**. Is there cross-examination?

Mr. **Anderson**. Yes, sir.

The **Chairman**. Let me advise both House and Mr. Anderson that it would be our hope that this witness could be questioned with regard to any matters that the committee needs to hear from this witness at this time. We did not look forward to him being recalled at a later time in the proceeding.

Mr. **Anderson**. That would be my hope also, and I would hope it would be his.

Mr. **Bryant**. Mr. Chairman, at this time, we would like to note for the record that this witness is not on the witness list as a respondent, and he indicated to us no intention to call him as part of his direct case.

Mr. **Anderson**. Mr. Chairman, may I respond?

The **Chairman**. We understand that. It is our view that respondent's counsel can question the witness on whatever matters he would like to at this time.

Mr. **Bryant**. Even beyond the scope of our direct examination?

The **Chairman**. Beyond the scope of direct examination, if he had additional questions of him at this time.

Mr. **Anderson**. Mr. Chairman, in my pretrial statement—just so the record is clear on this because I have been attacked twice—I explicitly made it clear that there were witnesses on the managers' list who we might have to call on two conditions: one, if necessary for an orderly presentation of proof; or if there were rulings on the scope of cross-examination that prohibited us from bringing it forward.

Mr. Sonnett, they have known, is in that category. Mr. Sonnett was——

The **Chairman**. The Chair has already ruled that the counsel can go beyond the scope of direct examination.

CROSS EXAMINATION

Mr. **Anderson**. Now, Mr. Sonnett, just to pursue what is within the scope of cross-examination, did the Romanos ever express to you as part of their reasons for thinking that this was nonsense, their opinion regarding Judge Alcee Hastings?

Mr. **Sonnett**. Yes, they did.

Mr. **Anderson**. And what opinion did they give you, sir?

Mr. **Sonnett**. They felt, first of all, that it was impossible for anybody to be able to get to a Federal judge, and they also had a very high regard for Judge Hastings. They expressed the view that he was honest and that any talk by Moscato that somebody could get to the judge just could not be true.

Mr. **Anderson**. And this was after he had presided over the trial that resulted in their conviction?

Mr. **Sonnett**. Yes, sir.

Mr. **Anderson**. And they still had that regard for him.

Mr. **Sonnett**. Yes, they did. They thought that Judge Hastings had given them a fair trial. Their concerns were primarily about the prosecution.

Senator **Leahy**. I am sorry. I did not get that last——

Mr. **Sonnett**. I said their concerns, the Romanos' concerns, were primarily about the prosecution. They thought that the Government had been terribly unfair to them.

Mr. **Anderson**. Now, Mr. Sonnett, it might aid the committee if we could briefly give some of the background, your own personal background. You are presently a partner in your own firm; is that correct, sir?

Mr. **Sonnett**. Yes, sir. The name of my firm is Sonnett, Sale and Kuehne, K-u-e-h-n-e.

Mr. **Anderson**. And does that firm specialize in any particular area of the law?

Mr. **Sonnett**. Our practice is limited to criminal law, criminal defense. About 75 to 80 percent of our practice is in Federal court, and we engage primarily in representation of complex criminal cases and white-collar criminal cases.

Mr. **Anderson**. Is a significant part of your practice in the Southern District of Florida?

Mr. **Sonnett**. Yes, sir.

Mr. **Anderson**. Is all of it in the Southern District of Florida?

Mr. SONNETT. No. I fortunately have managed to get a reputation outside of my district, and I practice in other areas.

Mr. ANDERSON. Now, how long have you been in criminal defense practice?

Mr. SONNETT. Since October 1972.

Mr. ANDERSON. Prior to that, what position did you hold, sir?

Mr. SONNETT. I was an Assistant U.S. Attorney in the Southern District of Florida and chief of the criminal division for that office.

Mr. ANDERSON. And by chief of the criminal division, where is that in the chain of command in the U.S. Attorney's Office?

Mr. SONNETT. Well, then, in a much smaller office. It was I guess third in line. I was in charge of all criminal prosecutions for the office.

Mr. ANDERSON. And in that connection you would have a substantial impact and be familiar with the standards in exercising prosecutorial discretion as regards investigations and decisions to prosecute, would you not, sir?

Mr. SONNETT. Yes, sir.

Mr. ANDERSON. Now, just to come back to your present, are you a member of any bar associations?

Mr. SONNETT. Yes, sir. I am active in bar associations.

Mr. ANDERSON. Are you a member of the American Bar Association?

Mr. SONNETT. I am a member of the American Bar Association.

Mr. ANDERSON. Apart from your membership card, do you hold any positions within the American Bar Association?

Mr. SONNETT. Yes, sir. I am a member of the House of Delegates of the American Bar Association representing the Dade County Bar Association from Miami. I am a member of the Executive Council of the Criminal Justice Section of the American Bar Association. I am a member of the Executive Council of the National Conference of Bar Presidents, which is an allied organization to the ABA and active in committee work, committees of the House of Delegates and of the Criminal Justice Section and the Individual Rights and Responsibilities Section.

Mr. ANDERSON. And are you also a member of the National Association of Criminal Defense Lawyers?

Mr. SONNETT. Yes, sir, I am. I am president-elect of the National Association of Criminal Defense Lawyers, and I will assume the presidency in August.

Mr. ANDERSON. Now, Mr. Sonnett, you have testified that you had an attorney-client relationship with the Romanos; is that correct, sir?

Mr. SONNETT. Yes, sir.

Mr. ANDERSON. The committee has heard and has received a transcript of some proceedings that took place on May 11, 1981. Do you recall those proceedings?

Mr. SONNETT. Yes, sir.

Mr. ANDERSON. Have you reviewed the transcript of that?

Mr. SONNETT. Yes, I have.

Mr. ANDERSON. To the best of your recollection, Mr. Sonnett, did you give Mr. Deichert any advance notice of your intent to seek a continuance on that Monday morning?

Mr. Sonnett. No. I gave Mr. Deichert no advance notice. I was not able to. I talked to him immediately before the hearing commenced outside the courtroom.

Mr. Anderson. And do you have any recollection of giving Judge Hastings any advance notice?

Mr. Sonnett. I do not have a clear recollection. Having tried to piece the facts together, it is my view that I probably could not have given any notice to chambers before Monday morning.

Mr. Anderson. And in the ordinary course of your conduct as a lawyer, if you had communicated *ex parte* with chambers, would you have told Mr. Deichert that?

Mr. Sonnett. Oh, yes. That is the reason, by the way, that I do not think I communicated that to chambers on Friday. The hearing was on a Monday morning. My recollection is one of becoming increasingly convinced in the days before the hearing, even over the weekend, that I had no choice but to move for a continuance. Had I had time on Friday to call chambers, I certainly would have attempted to call Mr. Deichert.

Mr. Anderson. Now, Mr. Sonnett, your view of the need for a continuance stemmed at least in part, did it not, from some concern over the papers that had been prepared by prior counsel?

Mr. Sonnett. Yes, sir. The matter was not only sent for sentencing but was set for final argument on all of the pending post-trial motions, including motions for a new trial and motions for judgment of acquittal. That is not a procedure that I find very often. Generally, a court has ruled on those motions earlier.

As I began to review the post-trial motions, it became clear to me that there were very important matters that had not been raised in the post-trial motions. The brothers Romano had been represented by a fine lawyer but a lawyer who was a civil practitioner, did not have any experience at all in criminal cases, had no experience at all in complicated RICO cases. And the motions showed that.

It was my view that the record had to be protected by refiling, or at least supplementing, the motions for a new trial, and I also believed, frankly, that I might actually have a reasonably good chance to argue some points that might get a new trial.

Mr. Anderson. Now, Mr. Sonnett, Judge Hastings was familiar with your reputation in south Florida and otherwise on May 11, 1981, was he not?

Mr. Sonnett. Yes, sir.

Mr. Anderson. And he was aware that you had a fairly demanding practice in terms of time, was he not?

Mr. Sonnett. I believe so. I was considered to be a busy lawyer, and I think most of the judges knew that.

Mr. Anderson. At the same time, when he granted your continuance, he did instruct you that all motions, including anything to reconsider the forfeiture, would be heard the next time out, did he not, and that they should be brief?

Mr. Sonnett. Yes, sir. Judge Hastings agreed to give me a 30-day continuance—I had asked for I think 30 to 60—and indicated that I would have 15 days to file additional motions, and that the next time it was set we would proceed to argument and sentencing.

Mr. Anderson. Now, in connection with the setting of the 30-day continuance, in fact was that schedule adhered to?

Mr. **Sonnett**. No, it was not. Even at the hearing, Mr. Deichert represented to the court that he had some scheduling problems. He was about to start a long trial. He asked at the hearing that he be able to consult with me and work out some dates for the hearing. And when Jim and I talked later by telephone, it became clear that the 30 days was unrealistic, and we both agreed to a schedule that would give us time to prepare and file our motions and responses.

Mr. **Anderson**. And you and Mr. Deichert advised the court as to the schedule that would meet both of your schedules?

Mr. **Sonnett**. Well, we suggested a schedule to the court. Judge Hastings had indicated that he would entertain that kind of an agreement, and I think it was actually at our suggestion that the ultimate scheduling was set.

Mr. **Anderson**. So at least some portion of the delay from May 11th to July 8th was attributable to Mr. Deichert's and your schedules rather than to any decision by the court; am I correct?

Mr. **Sonnett**. Yes. Primarily Mr. Deichert's schedule. I was prepared to try to move ahead by filing motions within the 15 days, but Mr. Deichert would not have been able to respond, would not have had time to respond. So we ultimately agreed on a slightly lengthened schedule.

Mr. **Anderson**. And you did file a pretrial motion regarding the new trial and judgment notwithstanding the verdict that raised additional issues, did you not?

Mr. **Sonnett**. Yes, sir. And at the May 11th hearing, I had indicated in a broad sense to Judge Hastings what those issues were and why I thought that they were important.

Mr. **Anderson**. Am I correct in my recollection, or is it your recollection that one of those issues concerned the fact that one of the Romanos—Tom, I believe—had been stricken during his testimony and hospitalized, and ultimately his testimony had been taken by videotape?

Mr. **Sonnett**. Yes, sir. That was of major concern to me after talking to his prior lawyer and talking to Tom Romano. He had had a minor heart attack during the course of the trial, was hospitalized, and ultimately his—this was while he was on the witness stand testifying in his own defense. Ultimately, his testimony was continued by videotape deposition. Those were matters that I thought needed to be thoroughly briefed and had not been properly briefed by his prior counsel.

I should add, by the way, that an offshoot of that ultimately allowed us to prevail in reversing the conviction of both brothers Romano.

Mr. **Anderson**. Both convictions were reversed, and it was based upon restrictions Judge Hastings imposed upon communication between attorney and client with respect to that videotape testimony; is that essentially it?

Mr. **Sonnett**. Yes. The Fifth Circuit reversed their convictions based upon limitations that had been placed on communication between counsel and Tom Romano during the time of this attack and the subsequent deposition.

Mr. **Anderson**. When did that reversal come down, Mr. Sonnett, if you recall?

Mr. **Sonnett**. I do not really remember, Mr. Anderson.

Mr. **Anderson**. The opinion is reported, is it not?

Mr. **Sonnett**. The opinion is reported. It came down—I think it came down after Judge Hastings' trial.

Mr. **Anderson**. Did you consider the delay either in the trial court or the appellate court inordinate?

Mr. **Sonnett**. Well, my recollection is that we had some difficulty in getting the court reporter to deliver a full transcript to us, and there were some delays caused by that. But other than that, in getting the record on appeal together, I did not think the delays were inordinate, no.

Mr. **Anderson**. Do you think the delays in the trial court, given your background and the caseload in the Southern District of Florida were in order?

Mr. **Sonnett**. Oh, no. Absolutely not. Well, I think it should be understood that the indictment was issued against the Romanos back in I think 1978, and they were not actually tried until late 1980. If you are asking about the delay between the time of verdict and the time of sentencing, given the complexity of the case and the issues, the fact that new counsel had come in——

Mr. **Bryant**. Mr. Chairman, we object to that testimony because he did not ask that question.

Mr. **Anderson**. That is the question I am asking.

Mr. **Bryant**. And this gentleman here has the obligation to ask the questions that he wants the answers to regardless of what preparation with the witness may have taken place outside this courtroom. We object to that response unless it is responsive to a question asked by the lawyer.

The **Chairman**. The objection is overruled. The witness can continue to complete his answer.

Mr. **Sonnett**. Given all of the circumstances, I did not think that the delay was inordinate at all.

Mr. **Anderson**. Mr. Sonnett, would you describe for the committee the number of times you and I have discussed this case since 1983?

Mr. **Sonnett**. Well, it certainly would be under half a dozen. Substantively discussed the case? Probably no more than two or three times.

Mr. **Anderson**. Did I ever provide you with a copy of your testimony before the Investigating Committee?

Mr. **Sonnett**. You did, as well as the House.

Mr. **Anderson**. When did I do that, sir?

Mr. **Sonnett**. The other night.

Mr. **Anderson**. And when did you meet with me?

Mr. **Sonnett**. I met with you right after I met with Congressman Synar and, indeed, told them that I was leaving their office to go over to see you since you had requested to talk with me as well.

Mr. **Anderson**. And in my preparation, did I tell you the questions I would be asking you?

Mr. **Sonnett**. No. You simply went over broadly what you thought the scope of your cross-examination was going to be and what you thought evidentiary objections would be.

Mr. **Anderson**. And did I give you a set of your prior testimony to examine?

Mr. SONNETT. Yes. I had already received one from special counsel, and there was some question in my mind the other night as to whether or not I had received all of my testimony before the Investigating Committee. So I took what you gave me simply to double-check against that.

Mr. ANDERSON. And that was the extent of our preparation for your testimony today?

Mr. SONNETT. Yes, sir.

Mr. ANDERSON. Now, let me ask the narrower question. From the date of verdict, December 20th, to the date of sentencing, based upon your experience and knowledge of the docket in the Southern District of Florida, did you consider the delay in the *Romano* case in any way inordinate?

Mr. SONNETT. No. I have answered that question.

First of all, there was a bifurcation of the issues at trial. There had been a resolution of the guilt of the Romanos by jury verdict, but there had been a decision made to handle the forfeiture issues that were collateral and dependent upon the conviction after the trial was over and in a non-jury manner. So Judge Hastings had set hearings on the forfeitures, had allowed those matters to be briefed, and then, of course, after I moved for an additional extension of time, had allowed me to re-brief both the forfeiture issues and the issues involved in the motion for a new trial.

Mr. ANDERSON. Now, Mr. Sonnett, moving forward, when you re-briefed the issues on forfeiture, had a case known as *United States* v. *Martino* been issued by the Fifth Circuit?

Mr. SONNETT. Not when I originally briefed the issues, no.

Mr. ANDERSON. And if you recall, when was that decision handed down?

Mr. SONNETT. The decision was handed down on June 19th, I believe, of 1981.

Mr. ANDERSON. And was that decision brought to your attention promptly?

Mr. SONNETT. Actually, it was brought to my attention by Mr. Deichert. I had already filed my post-trial motions and had filed motions for reconsideration of the forfeiture prior to the time that the Fifth Circuit decided *Martino*. It came down about a week, I guess, before Mr. Deichert filed his memorandum, and he raised it in his memorandum and brought it to the attention of the court.

Mr. ANDERSON. And did you brief the applicability of *Martino* in your reply?

Mr. SONNETT. Oh, absolutely. Mr. Deichert had taken the position that—well, two positions, one of which I agreed with; that is, that the *Martino* case only dealt with part of the forfeiture. There were actually two different aspects to the forfeiture. His position was that it only dealt with the profits that had been forfeited. I had no dispute with that. But he also argued that it was wrongly decided, an argument that I did dispute. As soon as I got his pleading in, we set about to file our own supplemental pleading that brought the case to the attention of the court and dealt with the argument that Mr. Deichert had made.

Mr. ANDERSON. And do you recall when you filed that reply?

Mr. SONNETT. A couple of days before the hearing. I believe it was before the sentencing. July 6th, I believe.

Mr. Anderson. And to the extent you are familiar with the practice in Judge Hastings' or other chambers, how are motions and memoranda ordinarily routed? Do they go straight to the judge?

Mr. Sonnett. Well, if they are filed in the clerk's office, it usually takes a day or two for them to get to chambers. I do not recall, frankly, whether or not—on those kinds of occasions I might well have delivered a courtesy copy to chambers. I do not recall whether I did.

Mr. Anderson. And to the extent you are familiar with the practice, when a copy reaches chambers does it go to the law clerk or the judge?

Mr. Sonnett. My understanding is it usually goes to the law clerk.

Mr. Anderson. Now, you appeared on July 8th, did you not?

Mr. Sonnett. Yes, sir.

Mr. Anderson. And the transcript of that has been admitted into evidence here. Have you had a chance to review that?

Mr. Sonnett. No. Actually, I have not had a chance to review that transcript.

Mr. Anderson. You do recall that at that hearing Judge Hastings announced his intention to stand by the forfeiture order but that he would issue a brief order explaining his decision in light of your arguments in the cases later?

Mr. Sonnett. Yes, sir, I do.

Mr. Anderson. Do you recall having had a conversation with the Romanos immediately after that hearing?

Mr. Sonnett. As we left the courthouse or the courtroom, I talked with them.

Mr. Anderson. And what did you say to them, and what did they say to you?

Mr. Sonnett. I told them that in my view Judge Hastings had not read the case. The case was, as we say in the legal business, on all fours. It was binding, in my view, on Judge Hastings. I could not imagine that he could have read the case and still say that he would sustain the forfeiture. And I told Tom and Frank that I thought when he got around to reading the case that he would have to reverse himself; and if he did not, then the Court of Appeals surely would.

Mr. Anderson. And in the course of your appearance in courtrooms around the country, both at the trial and appellate levels, have you ever had a judge announce, "I have read the record" or "I have read the decisions," and left the room with the sneaking suspicion that maybe that was not entirely accurate?

Mr. Sonnett. It has occurred to me on occasion, yes, sir.

Mr. Anderson. On perhaps more than one occasion?

Mr. Sonnett. Yes. I would have to say on more than one occasion.

Mr. Anderson. Now, Mr. Sonnett, did there subsequently come a time when a case called *United States* v. *Peacock* came to your attention?

Mr. Sonnett. Yes, sir.

Mr. Anderson. Do you recall that decision?

Mr. Sonnett. I recall the decision coming down. It came down in late August of 1981 and upheld and supported *United States* v.

Martino. So it was further evidence of the fact that our position was correct.

Mr. ANDERSON. Had Mr. Deichert argued in his papers as one ground that the judge should not follow *Martino* is that it was a decision that was likely to be reversed, either *en banc* or by the Supreme Court?

Mr. SONNETT. His argument basically was that it was wrongly decided by the panel. I am not sure if he—I cannot recall, frankly, from the pleadings if he specifically said it would be reversed *en banc*. But he clearly was making the argument that it was a wrongly decided case by the panel.

Mr. ANDERSON. And if a district court judge agrees that a panel of the Court of Appeals for the circuit in which he sits has wrongly decided ~~a case,~~ what is he supposed to do?

Mr. SONNETT. Nothing. I mean, a judge is bound by the panel decision until such time as it is overturned, either *en banc* or by some subsequent opinion.

Mr. ANDERSON. To the extent that a judge thinks a decision is wrongly decided, or where a judge thinks a decision is wrongly decided, what effect does a confirmation decision such as *Peacock* have? Does that have any jurisprudential or precedential value?

Mr. SONNETT. Well, it certainly buttresses the mandate of the case. I cannot remember offhand now, having not looked at the opinions in a long time, whether it was a different panel, but I suspect it was—which means that now two panels of the Fifth Circuit had come down and said exactly the same thing.

Mr. ANDERSON. And do you recall that *Peacock* summarily reversed a district judge who failed to follow *Martino*?

Mr. SONNETT. Yes, sir.

Mr. ANDERSON. If a district judge such as Judge Hastings was thinking taking that tack, would a decision such as that serve as a caution?

Mr. SONNETT. Oh, I would certainly think so. In my view, a judge who is bound by circuit precedent is bound by circuit precedent and should not have to take a second case coming down to convince that judge of how to rule. But certainly a second case would enforce the first case.

Mr. ANDERSON. Shifting briefly, Mr. Sonnett, approximately how many times have you appeared in Alcee L. Hastings' courtroom?

Mr. SONNETT. Oh, I would say at least a dozen, perhaps as many as two dozen. I have only had one jury trial in front of Judge Hastings, but I have had many matters, hearings and the like.

Mr. ANDERSON. And on the basis of your appearances before Judge Hastings, have you formed an opinion as to his qualities as a trial judge?

Mr. SONNETT. Yes, sir.

Mr. ANDERSON. What is that opinion?

Mr. SONNETT. I think Judge Hastings was and is an outstanding jurist. He has great intellectual capacity, he has great judicial demeanor. He enables both sides, the Government and the defense, in criminal cases to have a fair trial, and he is very well-respected by both sides as well, defense counsel and Government prosecutors.

Mr. ANDERSON. Now, when you talk about his being very well-respected, have you had occasion to discuss Judge Hastings and hear his reputation among senior practitioners on both the Government and the defense side in the Southern District of Florida?

Mr. **Sonnett**. Yes, sir, I have. As you can imagine, in light of Judge Hastings' problems, there has been a great deal of discussion about him.

Mr. **Anderson**. And that is your opinion as of July 12, 1989 based upon all that you know, is it not, sir?

Mr. **Sonnett**. Yes, sir.

Mr. **Anderson**. And among those who actually appear and submit to his jurisdiction, that is his reputation as of July 12, 1989, is it not, sir?

Mr. **Sonnett**. That was his reputation both before and after the events leading up to his trial, yes, sir.

Mr. **Anderson**. And when you express your opinion of his quality as a jurist, if I might just be sure, you have also appeared in Federal courts around the Nation, have you not?

Mr. **Sonnett**. Yes, sir, I have.

Mr. **Anderson**. You have had an opportunity to practice before other district judges and try cases, have you not?

Mr. **Sonnett**. Yes, sir.

Mr. **Anderson**. Measured by a national standard as well as the standards of Florida, what is your opinion of Judge Hastings as a trial judge?

Mr. **Sonnett**. I always thought that Judge Hastings was one of the finest judges that I had the opportunity to appear before.

Mr. **Anderson**. Have you ever tried a case before Judge Hastings involving confidential information?

Mr. **Sonnett**. Well, the one trial that I tried before Judge Hastings involved a potential CIA defense, if you will, without going into great detail about the case, and I suppose that could be categorized as involving some confidential information.

Mr. **Anderson**. Based upon your experience in that case and elsewhere, and based upon his reputation, do you have an opinion as to Judge Hastings' integrity?

Mr. **Sonnett**. Oh, yes, sir, I do.

Mr. **Anderson**. What is that opinion?

Mr. **Sonnett**. I think he is a man—was and is—a man of the highest integrity.

Mr. **Anderson**. Now, Mr. Sonnett, based upon your familiarity with the cases in the Southern District of Florida, are they typically criminal cases, fairly large cases?

Mr. **Sonnett**. My cases?

Mr. **Anderson**. Well, your cases and generally the docket that comes before a Federal judge in Miami.

Mr. **Sonnett**. Yes, sir. The Southern District of Florida is the busiest district in the country. We have an excellent bench in Miami in the Southern District. That includes Ft. Lauderdale and Palm Beach, and they are vastly overworked.

Mr. **Anderson**. And underpaid.

Mr. **Sonnett**. And underpaid, absolutely.

Mr. **Anderson**. Now, Mr. Sonnett, could any judge who wished to obtain bribes—are there defendants appearing before them daily who would be likely candidates?

Mr. **Baron**. Objection. How could he possibly know that?

Mr. ANDERSON. I thought the Senate wanted everything.

Mr. BARON. Well, there are some limits.

The CHAIRMAN. The objection will be sustained.

Mr. ANDERSON. Mr. Sonnett, you became friends with the Romanos as well as their lawyer, did you not?

Mr. SONNETT. Yes, sir. I had a very friendly relationship with them. I thought a great deal of both of them.

Mr. ANDERSON. Even after these events broke, did you have occasion to discuss Judge Hastings with them?

Mr. SONNETT. Yes, sir.

Mr. ANDERSON. What was their opinion of Judge Hastings at that time?

Mr. SONNETT. They both very firmly believed that Judge Hastings was honest and that the allegations against him had to be wrong.

Mr. BRYANT. Mr. Chairman, we object. That is blatant hearsay and has no credibility whatsoever and is an opinion that should not be admitted.

I would furthermore like to assert to the chairman, Mr. Anderson has not laid a proper predicate for the character witness testimony that has been offered this morning, and we have not heretofore objected because we assumed that based upon the types of rulings that have been issued before, a liberal ruling would be issued that would allow the testimony in for the benefit of all the Senators, so we did not object. But this testimony is objectionable, and we raise an objection against it and ask you to rule with us.

Mr. ANDERSON. Mr. Chairman, may I respond? Blatant hearsay? We have now established by the committee's prior rule that things Tom Romano said to him that are recorded and filed come in; that is only level one. I'm not yet getting back to his opinion of Phil Moscato or others.

The Romanos have been admitted by hearsay. The Romanos are now being admitted by hearsay. I am willing to go with Mr. Bryant either way—either the rule on hearsay applies, or it does not.

Mr. BRYANT. Mr. Chairman, the further rule would apply that he has not laid any predicate to show that the Romanos had any reason to have an accurate opinion of the judge's character either way. That alone should rule this testimony out of order.

The CHAIRMAN. The objection will be overruled. The witness can respond to the question.

Mr. ANDERSON. Did they have an opinion?

Mr. SONNETT. Yes. They very clearly believed, even after these events occurred, that Judge Hastings was honest, that he was not a judge who could be bribed. They believed that when they were approached back in April 1981 by Brother Moscato, and that's the reason that they so quickly dismissed it. And they continued to believe that even after the allegations came forward.

Mr. ANDERSON. Now, Mr. Sonnett, in 1981 you had considerable experience as a senior prosecutor for the Federal Government and significant experience as a criminal defense lawyer, did you not, sir?

Mr. SONNETT. Yes. My prosecutorial experience was some time before that.

Mr. ANDERSON. But you were generally familiar with the standards that persons you considered to be good prosecutors exercise in making investigative and prosecutorial decisions?

Mr. SONNETT. Well, I had been charged with the responsibility of exercising prosecutorial discretion, yes, sir.

Mr. ANDERSON. And did you have, based upon that experience, a reaction when you learned that William Borders had been arrested at the scene of the payoff and that the money had not been permitted to pass?

Mr. SONNETT. Yes, sir, I did.

Mr. ANDERSON. What was that reaction?

Mr. SONNETT. I frankly was astounded. I thought it was as bad a prosecutorial or investigative decision as I had heard about in years.

Mr. ANDERSON. Did you have occasion to discuss that with members of the Strike Force in the U.S. Attorney's Office in Miami at that time?

Mr. SONNETT. I did talk to some prosecutors about it.

Mr. ANDERSON. What was their reaction?

Mr. SONNETT. Well, they were slightly dismayed, I guess is the best way to put it. They felt it was the wrong decision. One prosecutor told me that the decision had been made——

Mr. BARON. Objection.

Mr. BRYANT. Objection, Mr. Chairman. This is blatant hearsay from a third party we know nothing whatsoever about. He said "one prosecutor" said—what is he talking about? We don't even know who he is talking about.

The CHAIRMAN. The objection will be sustained to the extent that the witness is testifying about an unidentified communication to him. If he wishes to be more specific about who he was speaking to, his testimony will be permitted.

Mr. ANDERSON. With whom did you talk, Neal?

Mr. SONNETT. I was speaking with the head of the Strike Force, Mike Levin.

Mr. ANDERSON. And that was the person to whom you ultimately took the Romanos in and told them about these approaches?

Mr. SONNETT. Yes. Mike had called me the night, or shortly after Mr. Borders had been arrested, as a courtesy to warn me that I was about to start getting telephone calls from the media because an FBI agent had impersonated one of my clients. And in the course of that call, he gave me an overview of what had occurred and told me that Borders had been arrested and, during the course of the conversation, told me that it was his understanding that the arrest had occurred because the FBI did not want to part with the money and suggested that he thought that that was not a correct decision.

Mr. ANDERSON. So the head of the Strike Force and you agreed on that issue?

Mr. SONNETT. Oh, I felt very strongly about it. You know, had I been in charge of the investigation, the risk of losing a quantity of money is far outweighed by the necessity of gaining good, strong evidence either of guilt or of innocence, and that never happened in this case.

Mr. **Synar**. Mr. Chairman, we would like to object again. We do not mind this line of questioning with the liberal interpretations of the Chair, but it is clear the witness is going way beyond the original question.

The **Chairman**. The objection is overruled. The witness has responded as best he understands the question.

Mr. **Anderson**. If we could get a procedural matter, I can live with it either way, but are we going to have one lawyer on each side per witness, or multiple bobbings up and down? We can accommodate the committee's pleasure.

The **Chairman**. I believe the attorney handling this portion of the case is Representative Synar, who made the last objection.

Mr. **Anderson**. All right. The last time, I think there were four objections.

Mr. **Bryant**. Well, Mr. Chairman, with regard to the direct examination of the witness, we would accede to the usual rule that only one attorney be allowed to cross-examine and direct-examine a witness; but with regard to objections, that is not the usual rule, and we would urge the committee to allow one again the committee to hear the legal opinions of our panel when a matter such as this is brought forward—not to restrict us to the particular person that conducted the direct examination to make an objection.

Mr. **Anderson**. Again, Texas practice must differ——

The **Chairman**. Let me just advise counsel for the House that I think we can have a more orderly proceeding if we do have some agreement among the House managers as to who will be posing objections at any particular time in the proceeding. Obviously, if there are exceptions, we can deal with that, but I do think it is somewhat disorderly to have a substantial number of people, any of whom might feel compelled to participate at any particular time. So if you can try to structure that objecting process, I think that would be helpful to the committee.

Are there additional questions of this witness, Counsel?

Mr. **Anderson**. Only a couple more, Mr. Chairman.

Mr. Sonnett, let me show you what I have marked as Respondent's Exhibit Number 7 and ask if you can identify it.

Mr. **Sonnett**. Yes, sir. This is a copy of my professional résumé.

Mr. **Anderson**. Was that prepared by you, and does it accurately describe your career?

Mr. **Sonnett**. It was prepared by me, and it accurately describes my career. I think there are a couple of things that recently happened to me that are not on here that I am proud of, but yes, sir.

Mr. **Anderson**. Mr. Chairman, in order to make it unnecessary to lay a further foundation for both his credentials and the basis of his opinion, I would move the admission of that résumé into evidence.

The **Chairman**. Is there any objection to the introduction of the exhibit?

Mr. **Synar**. No objection.

The **Chairman**. It will be admitted.

[The document referred to was marked Respondent's Exhibit No. 7 and was received in evidence.]

Mr. **Anderson**. Mr. Chairman, I have no further questions of this witness.

The **Chairman**. Is there redirect examination?

Mr. **Synar**. There is, Mr. Chairman.

REDIRECT EXAMINATION

Mr. Sonnett, the Romanos were connected with organized crime, were they not?

Mr. **Sonnett**. In my view, they were not, sir.

Mr. **Synar**. Now, were they a member of the Genovese family?

Mr. **Sonnett**. I—I understand that another witness has testified to that. I never had any information to indicate that either one of the Romanos were connected with organized crime, and in fact my view of them was quite the opposite. I always held a very firm view that a RICO prosecution which labelled them for all time as convicted racketeers was inappropriate and should not have been brought. And my biggest regret is that I never had the opportunity to retry the cases because both of them died. I think on retrial, they would have been acquitted.

Mr. **Synar**. But they were convicted originally of that.

Mr. **Sonnett**. They were convicted of the charges against them, yes, sir.

Mr. **Synar**. And it was their opinion of Judge Hastings that he was a fine and honest judge that you testified to.

Mr. **Sonnett**. Yes, sir.

Mr. **Synar**. Mr. Sonnett, didn't Judge Hastings say on July 8th that he had read the *Martino* case?

Mr. **Sonnett**. Yes, sir, he did. I think I asked him if he had read my memorandum, and he indicated that he had—but clearly, he gave the impression that he was familiar with the *Martino* case.

Mr. **Synar**. Do you happen to recall how long the slip opinion of the *Martino* case was?

Mr. **Sonnett**. My recollection is it was a lengthy opinion. The portion dealing with forfeiture was rather short, but the opinion itself was a lengthy opinion, I think.

Mr. **Synar**. The opinion itself, but the slip opinion was, what, two or three pages?

Mr. **Sonnett**. Congressman Synar, I really don't recall. I have not looked at the *Martino* opinion in years.

Mr. **Synar**. OK.

Mr. **Sonnett**. My recollection is that it was a lengthy opinion and that only the portion on forfeiture was a short portion of the case—but I may be wrong about that.

Mr. **Synar**. OK. As of July 8, Mr. Sonnett, wasn't Judge Hastings bound by the *Martino* decision of June 19th, and wasn't his oral ruling consistent with that *Martino* decision?

Mr. **Sonnett**. Well, first, he was bound in my view by the *Martino* opinion, and his oral ruling from the bench was inconsistent with that——

Mr. **Synar**. Was inconsistent with the *Martino* decision.

Mr. **Sonnett**. And my view, of course, was that he simply had not read or digested the opinion yet and was basing his ruling on cases that had been decided previous to *Martino*.

Mr. SYNAR. OK. Now, you are familiar with the provisions of the Federal Rules with respect to when an appeal must be filed from a final order?

Mr. SONNETT. Yes, sir.

Mr. SYNAR. Did you file an appeal on July 14, 1981 from the July 8th oral ruling of Judge Hastings on the issue of forfeiture?

Mr. SONNETT. Yes, sir. I think I actually filed two notices of appeal—one in the criminal case proper and one in the forfeiture aspects of it, which was a procedure that was then employed by the Fifth Circuit Court of Appeals.

Mr. SYNAR. If I could call on Exhibit 2, now, was that appeal characterized by you in your notice of appeal, Mr. Sonnett, as an appeal from a final order and judgment of forfeiture entered July 8, 1981?

Mr. SONNETT. I haven't looked at that, but I'm sure it said something—either directly said that or very close to it.

Mr. SYNAR. OK. So that at least six days after the July 8th order, you believed that order to be final, did you not?

Mr. SONNETT. Well, yes, sir. Judge Hastings had ruled from the bench. While I told my clients that once he read the case, I thought he'd have to change his mind, the filing of the notice of appeal is jurisdictional, and I could not wait to see whether or not Judge Hastings was going to come forward with an opinion. The notice of appeal had to be filed to protect the record, and that is standard language that goes in the notice of appeal.

Mr. SYNAR. All right. Mr. Sonnett, we have had entered in the record an extensive background in your area, and it is one that I think you could be very proud of.

Mr. SONNETT. Thank you.

Mr. SYNAR. You testified yesterday at the beginning of the questions that you have been practicing law since 1967, which is around 21 years; is that correct?

Mr. SONNETT. Yes, sir.

Mr. SYNAR. Now, you also have testified that it is your usual practice to inform the court prior to seeking a continuance; is that correct?

Mr. SONNETT. Well, generally, I have an opportunity to file a written motion, so the court is informed by way of written motion. In an emergency situation like this, if I had the time and the opportunity, I certainly would inform not only the court but the prosecution.

Mr. SYNAR. But wouldn't you agree that a judge would be annoyed if you failed to give him the courtesy of informing him in the chambers prior to making an oral motion for continuance?

Mr. SONNETT. Oh, I don't know about annoyed, but I certainly think that it is a courtesy to call chambers and say, "I'm going to be coming into court and moving for relief or for a continuance."

Mr. SYNAR. And you have testified that you probably did not let the court know ahead of time that you would seek a continuance; is that correct?

Mr. SONNETT. I don't have any real clear recollection of that, Congressman. My own gut feeling is that I did not. I am aware of the fact that others have testified that they did receive notification from me, and the receipt of notification would not be inconsistent with what my normal practice would be.

My feeling is that if I did notify chambers, I probably did it on Monday morning. The hearing, as I recollect, was set for 1:00, and I may very well have called chambers Monday morning to let the chambers know that when I came there I would be asking for a continuance.

I just cannot imagine notifying chambers on Friday and not notifying Mr. Deichert. I mean, that's just not the way I practice law.

Mr. SYNAR. But the fact is, isn't it, that you don't really know whether or not you did call or not?

Mr. SONNETT. No, sir, I don't. I just have no real independent recollection.

Mr. SYNAR. Now, isn't it true also, Mr. Sonnett, that your apology to the court as reflected in the transcript of House Exhibit Number 4—and I will ask that to be—again let me repeat that your apology to the court as reflected in the transcript of House Exhibit 4, pages 3 and 4, extended only to—and let me quote, if I could—"not bringing this up by motion prior to coming here". Is that correct?

Mr. SONNETT. Prior to his coming down here; I was referring to Mr. Deichert.

Mr. SYNAR. That's correct.

Mr. SONNETT. Yes, sir.

Mr. SYNAR. So your apology referred to the failure to file a written motion, did it not, Mr. Sonnett?

Mr. SONNETT. Yes, sir.

Mr. SYNAR. OK. One final thing, Mr. Sonnett. Have you read the report of the Investigative Committee of the Eleventh Circuit regarding Judge Hastings' conduct?

Mr. SONNETT. I have read portions of it; I don't think I have read the entire report.

Mr. SYNAR. Have you read the report setting forth the results of the House investigation of Judge Hastings' conduct?

Mr. SONNETT. No, sir.

Mr. SYNAR. One final question. Mr. Sonnett, was Mr. Shohat a member of your firm in 1981?

Mr. SONNETT. Yes, he was.

Mr. SYNAR. Thank you, Mr. Chairman.

Senator PRYOR. What was that question, again, Counsel?

Mr. SYNAR. Whether or not Mr. Shohat was member of the firm in 1981.

The CHAIRMAN. Is there recross-examination?

Mr. ANDERSON. Just briefly, one motion. I would not ask that the managers be asked to substitute a full copy of the *Martino* slip opinion. Since its length had not been placed in issue until this question, we did not object to their including only a portion of it, but there has now at least been a suggestion that because the piece dealing with forfeiture was short, it made it less complex. I think the committee should have available to it the full length of that slip opinion so that it may assess the question of whether it was likely to have been read overnight or not by a busy Federal judge.

The CHAIRMAN. Is there objection to filing the full slip opinion with the committee?

Mr. **Synar**. Mr. Chairman, there is no objection. This may be a difficult task because as a slip opinion it may no longer exist. We'll do the best we can to provide that to the committee.

The **Chairman**. I think if the full opinion either in slip form or otherwise could be filed with the committee, that that would clarify it.

Are there questions—did you have additional questions, Mr. Anderson?

Mr. **Anderson**. Just briefly, if I might.

RECROSS EXAMINATION

Mr. Sonnett, is your opinion of Judge Hastings based on accounts made by the judicial report of the House, or is it based upon your own observations and his reputation in the Southern District of Florida?

Mr. **Sonnett**. It's based on my observations, my talking to other people, and taken in consideration of the allegations against him. As you might imagine, while I have not read all of the reports, I have some familiarity with the allegations against Judge Hastings, and I know that there are suspicious circumstances that have been raised. Notwithstanding those, I believe Judge Hastings to be a man of integrity, and I have always believed him and still believe him to be innocent. And I have made no secret about that, even to the prosecution, from the time I appeared before the grand jury until the time I talked with Congressman Synar the other night. I told Congressman Synar, who acknowledged that he understood that I had very firm feelings about Judge Hastings' innocence.

Mr. **Anderson**. Did there come a time when the National Association of Criminal Defense Lawyers Board of Directors appointed a subcommittee to read the entire report of the Eleventh Circuit investigation?

Mr. **Sonnett**. Yes, and copies of that were circulated to each board member of the National Association of Criminal Defense Lawyers.

Mr. **Anderson**. And they also read a provisional and preliminary report of the matter that I had prepared, did they not?

Mr. **Sonnett**. Yes, sir—or, they received it; I assume most, if not all, read it.

Mr. **Anderson**. Did that matter ultimately come before the Board of Directors?

Mr. **Sonnett**. There was a resolution that was introduced before the Board of Directors, yes, sir.

Mr. **Anderson**. And that resolution was to suggest that on principle, the matter against Alcee Hastings should be ended, was it not?

Mr. **Bryant**. Objection, Your Honor. That is completely without probative value, and it is irrelevant.

Mr. **Anderson**. He opened the door when he said did you read these hearsay accounts, and does that bear upon your opinion.

Mr. **Bryant**. Mr. Chairman, if they have a copy of the resolution, let them offer it into evidence. It has not at this time been established that it has any probative value whatsoever.

The **Chairman**. Does counsel intend to offer this resolution in evidence?

Mr. **Anderson**. Well, I will revisit my understanding of relevance and hearsay in light—I don't. I was only offering this. It bears probative value as to the credibility that ought to be assigned this man's opinion. It hadn't occurred to me—I'd be delighted to offer a copy of that resolution in evidence, but I——

The **Chairman**. The objection is overruled. The witness can go ahead and answer the question.

Mr. **Bryant**. Mr. Chairman, if I might further object, this document went to the issue of double jeopardy; it did not go to the issue of a factual assessment of what this case is, just as Mr. Sonnett is nodding yes to this counsel at this moment. It was not a decision with regard to the facts in this case. It was their expression of opinion with regard to the legal issue of double jeopardy.

Mr. **Anderson**. It was an expression of opinion of a group who had read the documents that Congressman Synar has asked this witness if he read.

The **Chairman**. The committee will hear the witness' statement if he has a statement to make about the resolution.

Mr. **Sonnett**. Well, the resolution passed by the National Association of Criminal Defense Lawyers did not purport to draw judgment on the facts of the case; the Congressman is correct about that. It did discuss legal issues, primarily double jeopardy and due process and fairness, and opposed the bringing of the impeachment proceedings. But it was not a factual determination.

Mr. **Anderson**. And that vote was taken among some of the most experienced criminal defense lawyers in the country, was it not?

Mr. **Sonnett**. We think the Board of Directors of the NACDL are among the top criminal defense lawyers in the country, yes, sir.

Mr. **Anderson**. What was the vote, if you recall, Mr. Sonnett?

Mr. **Sonnett**. Mr. Anderson, I really don't.

Mr. **Anderson**. Was it overwhelming?

Mr. **Sonnett**. Yes, it was, but I can't recall the exact number.

Mr. **Anderson**. No further questions.

The **Chairman**. Are there questions by members of the committee?

First, Senator Specter.

EXAMINATION BY THE COMMITTEE

The **Vice Chairman**. Mr. Sonnett, Mr. Deichert testified that he had no knowledge of your having notified Judge Hastings or anybody on Judge Hastings' staff about your intention to ask for a continuance when you appeared at sentencing on May 11th. And for reasons I know you understand fully, this is a very important point——

Mr. **Sonnett**. Yes, sir.

The **Vice Chairman** [continuing]. And I have heard your testimony on it. Could you search your recollection further on this issue as to whether you notified anybody in Judge Hastings' office as to your intention to make an application for a continuance prior to the time that Judge Hastings left the bench?

Mr. SONNETT. Senator, I don't think that I did. But I understand that during other proceedings at least one witness, a law clerk in Judge Hastings' chambers, testified differently. I therefore must admit to the possibility of having a faulty recollection.

As I recall the circumstances, I began to look at the post-trial motions just days before the time of sentencing. I was really not aware that there was going to be not just a sentencing, but also argument on these motions. And it was as I reviewed those in order to make oral argument on them that I realized that they were sadly deficient and that it was going to be necessary to refile them. Unless I had gotten a continuance on the sentencing, that couldn't have been done because the motions would have been ruled on, and jurisdictionally, I would have been out of court. And my recollection is that that fear started rising in me even over the weekend, and I may not have made a decision to seek a continuance until Monday morning.

That is the reason that I testified earlier that if I notified chambers, it probably would have been on Monday morning rather than any time prior to that. But I just do not recall whether I did.

I know that I did not notify Mr. Deichert, and I'm relatively certain that had I been aware of this or had made this decision on Friday, I would have had time to reach him in Atlanta before he came down—and I was profuse in apologizing to him for dragging him all the way down from Atlanta just to move for a continuance.

The VICE CHAIRMAN. Who was the clerk who testified that he had received notice from you about your intention to request a continuance?

Mr. SONNETT. I have been told—and I never heard him testify, but I have been told—that it was Jeffrey Miller.

The VICE CHAIRMAN. Had you in fact had conversations with Mr. Miller about the case?

Mr. SONNETT. I don't recall any such conversations. I mean, if I were going to notify chambers that I intended to move for a continuance, I could easily notify a secretary. I'm not sure that I would ask for a clerk. But I just have no recollection of notifying chambers on any occasion.

The VICE CHAIRMAN. You did notify Mr. Deichert, though, before you actually made the application in court—you notified him sometime earlier in the day?

Mr. SONNETT. Well, no. Just before the hearing started, I saw him outside the courtroom and apologized to him outside the courtroom and told him that I was sorry that I hadn't had a chance to contact him, but I felt I had no other choice but to move for a continuance. So it was five minutes before the hearing started.

The VICE CHAIRMAN. Well, did you give that notice to Mr. Deichert on the first occasion when you saw him on May the 11th?

Mr. SONNETT. Yes, sir.

The VICE CHAIRMAN. You say you customarily notify the court unless there is an emergency. What was the emergency, Mr. Sonnett?

Mr. SONNETT. No, I'm not sure that that's quite what I said, Senator. What I said is usually in these kinds of matters, if I am going to be asking for relief, I have plenty of time to file a motion. The emergency situations are things in which I do not have time to file a motion. Those are very rare. In this case I did not have an opportunity to file a written motion for continuance, which itself would have placed the court and the Government on notice of what I intended.

The Vice Chairman. Well, Mr. Sonnett, I don't quite—why didn't you have an opportunity to file the motion? You had been in the case at least since April—how long had you been in the case?

Mr. Sonnett. Well, I had been retained in early February, filed our notice of appeal February 17th, as I recollect. I had not had anything to do with the case up until that point. I was in a trial on another matter. And at the time I first agreed to represent the Romanos, it was only for the purposes of the appeal. As we got farther down the road, we began to expand our representation.

I just had not had an opportunity to review the post-trial motions until shortly before sentencing, and it was then that I realized that those post-trial motions needed supplementing.

The Vice Chairman. Well, but Mr. Sonnett, even if your representation is limited to appeal, the post-trial motions are critical to the representation on appeal because of the customary rule that you have to raise matters before the trial court if you are going to raise them on appeal, so——

Mr. Sonnett. That's correct, and that's the reason that I became very concerned.

The Vice Chairman. So you had in fact not done that until the eve of the sentencing on May 11th, which put you in the position of wanting the continuance, but not even having made up your own mind perhaps until that weekend; is that the status of events?

Mr. Sonnett. That's accurate, Senator, yes, sir.

The Vice Chairman. Mr. Sonnett, in your memorandum, you wrote that you——

Mr. Sonnett. I'm sorry, Senator. May I just say one thing, and that is that at the time that I moved for continuance, I obviously did not consider it a major matter; I have moved for continuance of other sentencings, and unless there is some reason that a continuance of a sentencing can adversely affect the Government or the court, those motions are generally granted. There is a series of events that I now know about that make my motion for continuance critical, but at the time I made it, I certainly didn't think that there was anything special about it.

The Vice Chairman. Well, Mr. Deichert, there is a lot more focus on this because of what occurred, and I can understand that a busy lawyer might not review the file until Friday afternoon or Saturday morning or Sunday and come to the conclusion that you have to file an application for a continuance. But in the light of the sequence here, I think we have to probe as hard as we can as to what you did.

You are an experienced lawyer; you are obviously an able lawyer. Under normal circumstances, you would have reviewed the file. You were retained in a big case. You were retained to handle the appeal. An integral part of handling the appeal is to know what is in the post-trial motions because that is a necessary foundation for your appellate argument. But the essence of what you are saying is you simply didn't get around to it until the eve of Sunday night and Monday morning.

Mr. Sonnett. Well, I'm not sure, Senator, that it was Sunday night or Monday morning, but it was within days of the sentencing.

The Vice Chairman. Well, let's focus on that, then. If it had been as early as Friday, wouldn't you have called Mr. Deichert to save him a trip from Atlanta?

Mr. Sonnett. I certainly would have tried—I couldn't have saved him a trip from Atlanta then, by that time——

The Vice Chairman. Well, you could have at some point prior to Monday, perhaps even on Sunday.

Mr. Sonnett. No. Mr. Deichert, Senator, would never have agreed to the continuance. He would have been there to argue against it. So I'm not sure that I could have saved him the trip. What I could have done was give him the courtesy of a telephone call to tell him what I intended. That is the way that I practice law, and I have that reputation among prosecutors.

So it would have been consistent with my practice if I had had the opportunity to call both Mr. Deichert and the court.

The Vice Chairman. Well, you might not have saved him a trip, you might have saved him a trip, but your point is that you would have notified Mr. Deichert as soon as you knew yourself.

Mr. Sonnett. Yes, sir.

The Vice Chairman. In your memorandum which has been admitted into evidence, Mr. Sonnett, you said that you had not been able to reach Deichert on this matter. The memorandum is April 16, 1981, and you had been notified about the issue two days before. When you say you had not been able to reach Deichert on this matter, had you made any effort to reach Deichert?

Mr. Sonnett. I don't recall, Senator, and I doubt that I had. I think I just got tied up and did not get a chance to make the telephone call.

The Vice Chairman. Mr. Sonnett, this might have been just a slip of the tongue, or not a complete statement, but I want to ask you about it. As I made a note of your testimony, you said that the Romanos believed Judge Hastings couldn't be bribed and that was the reason they quickly dismissed it. Is there any suggestion in that if they had thought that Judge Hastings could be bribed, they would not have quickly dismissed it?

Mr. Sonnett. No, sir, and I realize that it sounded bad right after I said it. Both of the Romanos—and their reputations have been pilloried over the years, and far more so after these matters involving Judge Hastings broke—but I considered the Romanos to be basically very honest men, and it was just not in their nature to try a bribe attempt.

Had they been of that nature, I wouldn't have been their lawyer. But they did not believe that you could get to a Federal judge, and they were not of a mind to do that kind of activity even if they thought you could get to a Federal judge. And I had given them fairly good assurances that we had a strong case to make on appeal.

The Vice Chairman. Mr. Sonnett, you have been questioned very broadly, perhaps too broadly, on issues here, but certainly consistent with prior rulings of the committee. And along that line I'd like to ask you just in brief summary form relating to the order of Judge Hastings in partial remittance of the forfeiture.

Preliminarily, are you aware of the sequence of events which led to his order on October 6th?

Mr. SONNETT. I'm not sure I entirely understand your question. I have subsequently heard or read testimony that deals with that.

The VICE CHAIRMAN. Judge Hastings issued an order of partial remittance on October 6th——

Mr. SONNETT. Yes, sir.

The VICE CHAIRMAN [continuing]. And there was a special delivery mail which was a part of that. You are familiar with those circumstances?

Mr. SONNETT. I am not thoroughly familiar with all of them, Senator, but over the course of these investigations and the trial, I have had an opportunity to hear a good bit of it.

The VICE CHAIRMAN. Did you consider anything suspicious or inappropriate or irregular about the sequence of events on Judge Hastings issuing the order of partial remittance on the forfeiture?

Mr. SONNETT. I really didn't, Senator. First of all, there was never any doubt in my mind until after the Fifth Circuit granted *en banc* review of *Martino.* But prior to that time, there was no doubt in my mind that that was the proper ruling.

The VICE CHAIRMAN. But why the ruling changing it, then, on October 6th?

Mr. SONNETT. Well, the question of the date was one that never occurred to me. I have had judges sit on motions for six months before issuing an order.

The VICE CHAIRMAN. Why a special delivery letter?

Mr. SONNETT. Well, I don't know that I got mine special delivery. That's the first time I have heard that, frankly.

The VICE CHAIRMAN. Well, it was delivered special delivery according to testimony adduced as to the copy which went to the prosecutor's office.

Mr. SONNETT. Well, I would not have seen the envelope. I have no reason to believe that I got anything by special delivery.

The VICE CHAIRMAN. Would you check your records to see if you did get something special delivery, if you got that order special delivery, as the prosecutor apparently did?

Mr. SONNETT. Senator, I am not sure that there is any way that I could check that. I can tell you—I think I have my file copy of the order with me—I can tell you when I received it, because we timestamp it in.

The VICE CHAIRMAN. Fine. Take a look—and take a look also to see if there was an accompanying letter because sometimes there will be a notation at the bottom of the letter about special delivery.

Mr. SONNETT. I am looking at the final order issued by Judge Hastings and indicating filed on October 6, 1981. On the last page of that order, it has a "received" stamp from my firm, or the name of my firm then, October 7, 1981. So it was received evidently by my office the day after it was filed. There is no envelope attached to this, and there would be no way, Senator, that I could check to see whether or not it came special delivery or otherwise.

The VICE CHAIRMAN. Well, you have a legal papers file before you; do you have a separate correspondence file that might contain a copy of a letter of transmittal?

Mr. SONNETT. I'm not aware, Senator—I have looked through the file on many occasions—I am not aware of any letter of transmittal at all.

The VICE CHAIRMAN. Do you have a separate correspondence file?

Mr. SONNETT. No, sir. This is a file that I have put together for these proceedings, so things have been removed from original files that I had and placed in one file——

The VICE CHAIRMAN. So if you had a letter of transmittal accompanying the order, it would be in that file.

Mr. SONNETT. I would think that if I had seen a letter of transmittal, it would have been placed in this file together with the order, yes, sir.

The VICE CHAIRMAN. All right. Well, would you take a look further to see if you might have a letter of transmittal, to see if you have any further evidence that bears on this issue?

Mr. SONNETT. Yes, sir.

The VICE CHAIRMAN. Thank you very much, Mr. Sonnett.

The CHAIRMAN. Senator Rudman, did you have a question?

Senator RUDMAN. A few, very briefly, following the line that Senator Specter has been on. It is a very troubling aspect of what we are going to be facing here.

Do you keep time records, Mr. Sonnett?

Mr. SONNETT. No, sir, I don't—very rarely.

Senator RUDMAN. You do not keep time records.

Mr. SONNETT. The nature of the criminal practice is not an hourly billing practice.

Senator RUDMAN. Do you keep phone logs?

Mr. SONNETT. We keep phone message logs; we don't keep logs of telephone calls that we make, although we very likely—well, I don't know about 1981—we keep our phone bills.

Senator RUDMAN. But there is no high probability there would be a record of a telephone call to the Federal District Court on May 8, 1981——

Mr. SONNETT. No, sir, there would not be that kind of a record since it would be a local call. There could conceivably be a record of a call to Mr. Deichert's office. I have frankly never checked the phone bills. I'd be happy to see if I could find them.

Senator RUDMAN. No. Mr. Deichert has testified that to his recollection he didn't hear about that. But you know the problem we have—we have evidence here that evidently, if the evidence is to be believed—and everyone will have to decide whether to believe it—that somebody else knew that this case was going to be continued.

Mr. SONNETT. I am aware of that, Senator.

Senator RUDMAN. I'm sure you are. And you testified in response to Senator Specter's question when he said, well, then, you might have prepared this on a Saturday or Sunday, and you said, well, no, it was a matter of maybe days before the Monday that you appeared in court.

Mr. SONNETT. Well, I think Senator Specter was talking about the eve of the hearing, Sunday night or Monday morning, and——

Senator RUDMAN. That's correct.

Mr. SONNETT [continuing]. And I work weekends, and have since I began the practice, so it could have been on the weekend—and I suspect, frankly, that that's what it was. If I had made this decision on Friday, I would have attempted to call Mr. Deichert and at least he would have received a message from me.

Senator RUDMAN. Were other members of your firm aware of what you were going to be doing on Monday in terms of this case?

Mr. SONNETT. Yes, sir—one was, because while I was in trial, an associate in my law firm was in charge of the case and had been working on it, and in fact, was briefing matters pertaining to the forfeiture. We agreed ultimately to write the memorandum of law that Judge Hastings had requested.

Senator RUDMAN. What was that person's name?

Mr. SONNETT. Ben Kuehne.

Senator RUDMAN. Was he aware that you would probably ask to have this continued for the reasons you have stated?

Mr. SONNETT. I recall discussing it with him, yes, sir.

Senator RUDMAN. Now, did he know any of the principals of this case at all?

Mr. SONNETT. When you say "principals", Senator——

Senator RUDMAN. In the case in which you were representing; did he know the people involved?

Mr. SONNETT. Do you mean the Romanos?

Senator-RUDMAN. Yes.

Mr. SONNETT. Oh, yes.

Senator RUDMAN. All right. Did he by chance know William Borders?

Mr. SONNETT. Mr. Kuehne, you are talking about? I am certain he did not.

Senator RUDMAN. All right. And I take it you did not know William Borders.

Mr. SONNETT. No, sir.

Senator RUDMAN. Have you any explanation—have you thought about this—as to how someone might know that you were going to be asking for a continuance—that is obviously one of the theories of this case. There are two theories, obviously, and we are faced with a very key bit of evidence here as to whether Mr. Borders learned this independently, or whether he learned this from Judge Hastings and was using it as charge. That is a difficult question.

Have you any idea at all how your decision to ask for a continuance might have been known by William Borders or William Dredge or anybody else?

Mr. SONNETT. Well, if you want my own speculation or my own theories, I'd be happy to share them with you.

Senator RUDMAN. Now, you see, when we ask the questions, they are not going to be subject to hearsay, so you go ahead.

Mr. SONNETT. First of all, I don't discount the possibility that that is just a coincidence, that there was a statement made about a continuance that had nothing to do with my intention to ask for a continuance. But I have always had a theory as a result of something that occurred to me when I was a prosecutor about what happened here, and if you would permit me, I will share that with you.

It is my belief that Bill Borders took advantage of Judge Hastings, that he was "rainmaking". I saw it happen when I was a prosecutor, I have seen it happen since I have been in private practice. And that is a person who is friendly with a judge or has some reason to claim a relationship with a judge attempts to take advantage of that relationship.

Senator **Rudman**. And that is obviously your opinion based on your speculation, on your prior experience.

Mr. **Sonnett**. Oh, yes, sir. I mean, that's only my opinion.

Senator **Rudman**. Well, obviously, that is one of the theories of this case. My question is is there any way that you could explain to us which would give some credence to that theory as to how Borders might have learned that you were going to ask for a continuance and taken advantage of that?

Mr. **Sonnett**. Well, I can shut down some doors for you. I can tell you that Borders never learned about it from us. No one in my firm had any relationship with Borders or with anybody else that is involved in that aspect of the case.

Senator **Rudman**. You are sure of that?

Mr. **Sonnett**. I am absolutely positive of that, Senator, and frankly, there has never been any suggestion otherwise since 1981; no question——

Senator **Rudman**. I'm not suggesting there is, but Mr. Borders was evidently quite a "mover and shaker", probably knew that you were then representing somebody in a case, and my question is is there some way, through somebody in your firm, he might have found that out?

Mr. **Sonnett**. I suppose, Senator, it is entirely possible that he could have found it out from someone in chambers if in fact I had placed a call and notified Judge Hastings' chambers that I intended to seek a continuance. This was a case that was much discussed around the courthouse. It was one that Judge Hastings found fascinating; the legal issues involved were fascinating. I believed it was going to be ultimately my first opportunity to argue in the United States Supreme Court. And, but for *United States* v. *Martino,* which got there first, I probably would have had the opportunity.

Senator **Rudman**. Did you ask members of your firm subsequent to all of these events unfolding, particularly after the Borders arrest and the subsequent trial of Judge Hastings, had you ever asked anybody in your firm whether or not they had disclosed to anyone that you in fact had asked for a continuance?

Mr. **Sonnett**. I don't know that I have ever asked that precise question, Senator, but let me tell you that I am 100 percent satisfied that no one in my law firm had anything to do in any way with anything improper.

Senator **Rudman**. I'm not suggesting they did. I'm just asking——

Mr. **Sonnett**. Oh, I understand, but your question——

Senator **Rudman**. I'm just asking whether or not there was a possibility that this information could have been gained by someone else. Is there any connection that you know of; that's my question.

Mr. **Sonnett**. The only people to whom we would have communicated, either myself or perhaps a secretary by instruction, that I intended to ask for a continuance would have been chambers. We communicated to no other people.

Senator **Rudman**. And you have no recollection of doing that?

Mr. **Sonnett**. Of communicating to chambers?

Senator **Rudman**. That's correct.

Mr. **Sonnett**. No, sir, I don't. I frankly think, Senator, that it is entirely possible that I may have done that. I mean, that would be consistent with the way I try to practice law. But I just don't have a clear recollection of it.

Senator **Rudman**. I thank you very much, and my questioning is obviously designed to find out what are the facts on Borders' knowing, if he knew, about this continuance. That is a very troubling aspect of this case.

Mr. **Sonnett**. I understand that, and I have racked my brain as a result of that.

Senator **Rudman**. And in fairness to the respondent, if there were some way that it could be established that there was an independent way, then that would be very important to the managers and to this committee. And you are saying that you just cannot throw any additional light on that question.

Mr. **Sonnett**. I don't believe I can, Senator.

Senator **Rudman**. Thank you, Mr. Sonnett.

The **Chairman**. Senator Leahy?

Senator **Leahy**. Thank you, Mr. Chairman.

Mr. Sonnett, in your practice, which I know is a significant and extensive one, are you often called in on a case, in a criminal case, after conviction and for the post-trial procedures?

Mr. **Sonnett**. Occasionally, yes. It is more usual that we are called in for the trial of the case, but we are on occasions called in after a trial has been completed to do the appeal.

Senator **Leahy**. So it is not an unusual thing when somebody has been convicted to sort of think maybe they want a different lawyer——

Mr. **Sonnett**. No. As a matter of fact in this case, Senator, the Romanos were asked to get a different lawyer. Their trial counsel who came down to see me with them at one point suggested to them that they ought to get a fresh view for the appeal and that he thought they needed a criminal law expert.

Senator **Leahy**. When you are called in a post-trial sequence, is it often at the last minute?

Mr. **Sonnett**. Well, yes, I think that's a fair statement. It sometimes is even after sentencing.

Senator **Leahy**. I understand. So are you in a position where, having been called in, that it is usual for you to file for a continuance, or is there any pattern in there, in your own experience?

Mr. **Sonnett**. Well, if I have been hired for the appeal only, then continuances are really irrelevant because the sentencing would have occurred. If I am brought into a matter after conviction and prior to sentencing for the purpose, among other things, of handling sentencing, it is very usual for me to ask for a continuance. I have done it many times. And continuances are generally—at least, reasonable continuances—are generally granted by the judges of our district.

I found nothing unusual at all about moving for a continuance in this case, and it is only years later, as coincidental events took place, that its significance has hit me.

Senator **Leahy**. So if somebody knew Neal Sonnett has been called in prior to—if they had had any experience at all with the way you practiced, and they knew you had been called in prior to sentencing, especially close to sentencing, would there be anything unusual in your practice to see you file a continuance?

Mr. **Sonnett**. No, sir, not at all. And I think judges of our district, if I may show such lack of humility, give me a good deal of credibility and know that I am not going to move for a continuance merely to stall. If I make a motion for continuance, it generally is for good and sufficient reasons, and most of my motions for continuance are honored by the judges in our court.

Senator **Leahy**. Well, you were also a prosecutor. Did you find it unusual if somebody was called in during the time you were a prosecutor just prior to sentencing to file for a continuance?

Mr. **Sonnett**. No, sir.

Senator **Leahy**. And did you find that those also tended to be granted?

Mr. **Sonnett**. Yes, sir. Any time, Senator, that a reasonable motion for continuance is made that does not interrupt a judge's schedule or does not result in some adverse complications or implications to the Government, it would seem to me that such a motion would be granted.

Senator **Leahy**. Now, I'm not sure I fully understood one answer before, maybe because I did not recall where it was reflected in past records. You had said at some point in your testimony that of course there were others who knew of this, and then I believe either Senator Specter or Senator Rudman in follow-up, you mentioned a Jeffrey Miller and his testimony, apparently a law clerk. Was there anybody else whose testimony you were aware of or statements you were aware of who knew of your request for a continuance?

Mr. **Sonnett**. No, sir—and frankly, Senator——

Senator **Leahy**. Was Jeffrey Miller who you were referring to in your earlier answer?

Mr. **Sonnett**. Yes, sir. And I was told that, by the way, by a member of Special Counsel's Office, Janice Cooper.

Senator **Leahy**. Now, you said that nobody in your office would have talked to Mr. Borders about this request for a continuance; is that basically what you said?

Mr. **Sonnett**. Absolutely. Nobody in my office knew Mr. Borders. To the extent that there is any suggestion that we were communicating with Mr. Borders, nothing could be farther from the truth.

Senator **Leahy**. Did you have any relationship with him?

Mr. **Sonnett**. No, sir; never met the man.

Senator **Leahy**. Now, you said you often work on weekends. I think every one of us up here can identify with that. But tell me, if you were working on a weekend, would you call up a court, either the secretary, court clerk, court reporter or anybody, and say, "Look, I'm supposed to be in there on Monday, but I just want to give you a heads up, I'm going to file for a continuance"?

Mr. **Sonnett**. Over the weekend? No, I couldn't have. I didn't have any residence numbers.

Senator **Leahy**. They had no procedure for that—I mean, there wasn't somebody in the court who took such calls just for scheduling purposes?

Mr. **Sonnett**. No, sir. And frankly, Senator, there is nothing unusual about my going into court and asking for a continuance without having notified anybody.

Senator **Leahy**. Oh, I understand, and I'm not suggesting there is. I'm just trying to make sure I fully understand what the practice and procedure was here. In some courts in my State, they do have a procedure where you can do that on weekends——

Mr. **Sonnett**. We have no such procedure. As a matter of courtesy——

Senator **Leahy**. You are probably smarter.

Mr. **Sonnett**. Excuse me, sir?

Senator **Leahy**. You are probably smarter. Go ahead.

Mr. **Sonnett**. As a matter of courtesy, I would always attempt to notify the court, particularly if the court had scheduled something that I was going to be moving to continue.

Senator **Leahy**. Well, what was Mr. Deichert's reaction when you told him you were going to seek a continuance? You said you saw him just outside the courtroom, is that correct?

Mr. **Sonnett**. Yes, sir.

Senator **Leahy**. What was his reaction?

Mr. **Sonnett**. He said he was going to oppose it. I expected that to be his position. I was not even mildly surprised at that.

Senator **Leahy**. I mean, was it like, "Hey, Neal, you know I am going to oppose this thing"—or, "By God, I'm going to oppose this thing"—I mean, was he just going through the motions, or did he really figure he had a good chance of opposing it and beating you on that motion for continuance?

Mr. **Sonnett**. Oh, I think the latter. I think he believed that he would oppose it and might prevail. And he was down from Atlanta, and I suspect he wanted to get it over with. But it was not something that he was terribly bent out of shape about.

Senator **Leahy**. So I mean, it wasn't just like going through the motions, or something like that, at the end of a trial, where you make a motion and expect it to be turned down. This was indeed adversarial?

Mr. **Sonnett**. Oh, yes, absolutely. I argued strenuously for my motion for continuance, and laid out for Judge Hastings several of the grounds that I thought needed to be reargued in the motion for new trial and the motion for judgment of acquittal, and Deichert's response was that those issues had been raised in pretrial motions, and this was just a rehash of old arguments.

As it turned out, Mr. Deichert was incorrect because one of those arguments ultimately contributed to the reversal of both of their convictions.

Senator **Leahy**. So a real debate.

Mr. **Sonnett**. A real debate.

Senator **Leahy**. It was your impression that he went into that with the understanding that he wasn't just making a record—I mean, he was actually acting to win?

Mr. SONNETT. Yes, although I don't think he was—it was not the most important thing that had ever happened to him——

Senator LEAHY. No, I know.

Mr. SONNETT [continuing]. But he was not saying with a wink to the court, "I oppose it." He legitimately opposed it.

Senator LEAHY. That's what I mean. It's not like some of the motions that everybody does just to preserve the record. I mean, this was a real debate.

Mr. SONNETT. That was my impression, yes, sir.

Senator LEAHY. Just a last question. I suspect when you go into courts—it is one thing reading a transcript, but you are a practiced attorney—I mean, you check the demeanor of the opposing counsel, you check the demeanor of a judge and so on. What was Judge Hastings' demeanor? Did he react that this is fully expected, or I'm annoyed that you are doing this—what was his demeanor?

Mr. SONNETT. Well, he said nothing until after I had made my argument and Mr. Deichert had responded. The only thing that he did say in the course of the argument was that at least one of the issues that I was raising, he didn't believe was going to get me anywhere. In fact, he was wrong about that as well, because that was the issue that ultimately we prevailed on.

But he was—I think he was very fair in telling Mr. Deichert that he recognized that I had a busy schedule, and that Mr. Deichert may only work on two or three projects at once, and I had other obligations, and he saw nothing wrong with giving me the continuance. It was not unexpected.

Senator LEAHY. You testified you had had cases before him before. Was there anything out-of-the-ordinary in his demeanor, or anything that struck you as anything different than you would have anticipated at a hearing of this nature?

Mr. SONNETT. Absolutely not. And I have looked back over this, Senator, and I have agonized over it. It is not necessarily a comfortable position to be outspoken on the subject of another man's guilt or innocence, and I have been outspoken from the beginning of this case. And I have had to do a lot of soul-searching to make sure that I am comfortable with that decision. There was nothing that he said or did at that hearing that, as I think back on it——

Senator LEAHY. And my last question is did you—you testified that you talked to Mr. Deichert—you met him just outside the courtroom or just before the proceeding and told him, look, we're going to have this continuance. Did you tell anybody else, other than Mr. Deichert, prior to making the motion in court—while you were just waiting for the court to proceed—I mean, you didn't walk from your car into the courtroom and go; you had some time prior to that. Did you tell anybody else?

Mr. SONNETT. Well, yes. I told my clients.

Senator LEAHY. When?

Mr. SONNETT. And I'm not sure that I told them until we got to court, actually. I'm not sure that I was able to reach them. They were not very happy about the decision. They wanted to get it over with. I felt it was important that we get the continuance.

I talked to my then associate, now my partner, because we discussed the strategy of what we needed to do in the post-trial motions. And I may have talked with other staff in my office. I can't recall.

Senator LEAHY. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Let me just advise the committee it is now shortly after twelve. Our schedule calls for us to adjourn at this point and recess and come back at 1:30. I would propose we do that because I think there are other Senators who have questions of this witness.

Why don't we as a committee meet in the conference room at 1:30 to deliberate on the issue of the subpoena duces tecum request that Judge Hastings' counsel has made, and then we will go forward again with this witness at about 1:45.

Mr. Anderson, did you have a point?

Mr. ANDERSON. If I could just alert the committee to an issue that you may want to decide—I'm not sure what the managers' decision is, but it came up yesterday, and it needs to be decided reasonably quickly.

There is a piece of sealed testimony from Jimmy Harmon, who was Mr. Dredge's control officer, the person he gave information to. Mr. Doar advises me it was transmitted to the House. The House advises me they have not opened the seal. It was sealed administratively by the Investigating Committee. Mr. Harmon is a witness, and I take it his criminal background and relationship with the Federal Government is an issue of some sort.

I don't know what kind of order it takes from the committee, but I want Mr. Harmon's statement before he appears.

The CHAIRMAN. We will consider those procedural matters. We will reconvene in open session at about 1:45.

We are in recess.

[At 12:05 p.m., the committee recessed, to reconvene at 1:45 p.m. this same day.]

AFTERNOON SESSION

The CHAIRMAN. The committee will reconvene.

We are still in the questioning phase of questions from the committee members to Mr. Sonnett. I believe Senator Leahy finished his questions. Are there other Senators who have questions?

Senator Pryor.

Senator PRYOR. Mr. Chairman, I will make these very, very brief, and I hope Mr. Sonnett can answer them briefly. I will get right into them.

Do you know Bill Dredge?

Mr. SONNETT. No, sir.

Senator PRYOR. You have never talked on the telephone with Mr. Dredge?

Mr. SONNETT. No, sir.

Senator PRYOR. Did you know Jesse McCrary, an attorney in Florida?

Mr. SONNETT. Yes, I know Jesse McCrary.

Senator PRYOR. Did you know that Jesse McCrary was representing—at the time he was chosen to represent Mr. Dredge, did you know that he was his counsel at a hearing in Florida?

Mr. SONNETT. No, sir. I do not think so. I have no recollection of that.

Senator PRYOR. You do not know a Jesse McCrary?

Mr. SONNETT. No. I do know Jesse McCrary.

Senator PRYOR. Pardon me. You do know a Jesse McCrary.

Mr. SONNETT. I was not aware that Jesse McCrary had any relationship with Mr. Dredge.

Senator PRYOR. Was Mr. McCrary a so-called criminal lawyer, basically? Did he represent people in criminal activity?

Mr. SONNETT. Jesse McCrary, to the best of my knowledge, does some criminal practice. I think he is not exclusively a criminal lawyer. I think the bulk of his practice is in other areas.

Senator PRYOR. On Friday, the 9th of May—and this is a very critical period, Mr. Sonnett—in 1981, you left your office, and it is a little bit unclear as to whether or not or who you contacted about the request for a continuation in the Romano affair which was going to be held the upcoming Monday.

Now, that afternoon and the balance of that weekend, were you in your home area? Did you travel?

Mr. SONNETT. No. I was home.

Senator PRYOR. Did you attend any social functions, say on a Friday evening or a Saturday or a Sunday that you can recall?

Mr. SONNETT. I cannot recall. I have my calendar with me for that period of time. I can check to see if——

Senator PRYOR. I am trying to ascertain if it were possible that you might have, in a social atmosphere, mentioned to someone almost inadvertently that you were going to request a continuance on the upcoming Monday.

Mr. SONNETT. Senator, I suppose it is possible. I have no recollection of that.

Senator PRYOR. You have stated you did not know Mr. Dredge; is this correct?

Mr. SONNETT. That is correct.

Senator PRYOR. You do not know him. Did you happen on that weekend to see Mr. McCrary at any function, party, social activity, anything of that sort?

Mr. SONNETT. Not that I can recall, Senator. I would be happy to look at my calendar to see if anything was on there for the weekend.

Senator PRYOR. Thank you.

Mr. SONNETT. But my recollection is I worked in the office most of the weekend.

Senator PRYOR. All right. On Monday, the 11th of May, which was the sentencing hearing or the hearing on the Romano matter, was that an a.m. or a p.m. date?

Mr. SONNETT. It was 1:00 o'clock in the afternoon, Senator.

Senator PRYOR. What did you do Monday morning, the 11th of May?

Mr. SONNETT. I would have been preparing probably for that case. I do not know of any other work that I was occupied with at that time. The hearing was in Fort Lauderdale. My office is in Miami. So I would have left an hour, an hour-and-a-half in advance of the hearing to get up there.

Senator **PRYOR**. Do you recall talking to the attorney, Jesse McCrary, on that morning? Did you happen by phone to talk to Mr. McCrary, to the best of your knowledge?

Mr. **SONNETT**. To the best of my knowledge, I did not. Jesse McCrary and I are not close friends. There was nothing that I am aware of that would have caused me to call him that day.

Senator **PRYOR**. This morning, you stated two times that you did not know Mr. Borders. Now, does that also mean that you have never talked to Mr. Borders by telephone?

Mr. **SONNETT**. Yes, sir.

Senator **PRYOR**. Did you ever talk to him by telephone?

Mr. **SONNETT**. No, sir. Never talked to him at all.

Senator **PRYOR**. No more questions, Mr. Chairman. Thank you, Mr. Sonnett.

The **CHAIRMAN**. Are there other questions?

Senator **BRYAN**. Mr. Chairman, just one.

The **CHAIRMAN**. Yes. Senator Bryan.

Senator **BRYAN**. Thank you.

Mr. Sonnett, very briefly, can you describe your personal relationship, if any, with Judge Hastings prior to this elevation to the bench in 1979? You have told us that you appeared in court a number of times once he became a Federal judge. You had one jury trial, as I recall, a number of other proceedings, and you have told us generally what your opinion is of him in terms of his integrity and his competence. What I am interested in is the personal relationship, if any, that you had with him prior to his coming to the Federal bench. Were you in the same defense bar association? Were you socially friendly with him? How well did you know him?

Mr. **SONNETT**. I knew Judge Hastings. We had a friendly relationship. We were not close friends. I did not socialize with Judge Hastings, but I had a warm regard for him. I knew him from his days as a lawyer and then after he went on the bench.

Senator **BRYAN**. Did you ever try any cases in which he was co-counsel, for example?

Mr. **SONNETT**. No, sir.

Senator **BRYAN**. Was he a member of this association of which you have recently been chosen as president-elect to assume the presidency in August, I believe was your testimony?

Mr. **SONNETT**. I do not believe so, Senator. I do not think he was ever a member of that organization, the National Bar Association of Criminal Defense Lawyers. I may be wrong about that.

Senator **BRYAN**. You would characterize your relationship as being friendly but not close personal friends.

Mr. **SONNETT**. Yes, sir.

Senator **BRYAN**. Not socially involved with him.

Thank you very much, Mr. Chairman.

The **CHAIRMAN**. Further questions? Yes, Senator Kerrey.

Senator **KERREY**. Mr. Sonnett, I have some questions about the 14th and 16th of April conversations with the Romanos in 1981. Without making you go through your whole testimony again, as I understand it, on the 14th the Romanos call up and assert that there may be some contact, and did on the 16th and said that they thought it was a scam, and that you should take no further action. Is that a fair——

Mr. SONNETT. Yes, sir. Actually, the best way we pieced together the dates indicated that the first phone call was probably on April 13th. It could have been on the 14th. Then when they called me on the 16th about a number of subjects—and my memorandum reflects several subjects that we discussed—Tom Romano simply casually asked me whether or not I had had an opportunity to talk to Mr. Deichert yet. And I said I had not, and he said, "Well, we are convinced that there is nothing to this. He is not going to bother us again, and there is no reason for you to have to make contact, if you have not already." It was not a concerted attempt to keep me from contacting Mr. Deichert; in fact, they had given me permission to do so.

Senator KERREY. Did you pass any judgment at the time? Did you make any comments back to the Romanos in regards to Judge Hastings' defense or in regards to the possibility that this might be some errant rainmaker?

Mr. SONNETT. Yes, sir, I did. My view was that it was either a scam or a setup of some kind, and I told both the Romanos when they talked to me about it that I knew Judge Hastings to be honest and I had serious doubts as to whether or not there could be any truth in that matter.

Nevertheless, whatever the real reason was, whatever the theory was—whether it is corruption or a scam or a ripoff or a setup—it was my view that it should be reported, and they gave me permission to do that.

The CHAIRMAN. Senator Lieberman.

Senator LIEBERMAN. Thank you, Mr. Chairman. Just really one question.

Mr. Sonnett, I would like to clarify something you said earlier, again, on this question of your normal procedure when seeking a continuance. You would normally, I gather, call the judge's chambers to notify them that that would be your intention; is that correct?

Mr. SONNETT. Well, no. Normally, Senator, I would file a written motion for a continuance.

Senator LIEBERMAN. Right. I understand. Let me get right to what I am interested in. You have mentioned a few times calling chambers to notify them of something, and as you have indicated, apparently Judge Hastings' law clerk—Mr. Miller, is it?—indicated that he remembers getting a call from you on this. You do not specifically remember it, but it is possible it happened. I just want to clarify because chambers is a general term.

When calling chambers, who might you have specifically spoken to?

Mr. SONNETT. Well, I think it depends on the judge. Either a secretary or a clerk who might be assigned to the case. I ought to clarify something for you, Senator.

Senator LIEBERMAN. Yes.

Mr. SONNETT. That is that I was told by a member of the special counsel's staff that there was that testimony. I have never seen such testimony, and, indeed, over the lunch break there was some doubt cast on whether or not there is such testimony from Jeffrey Miller. So the only reason I was assuming that testimony existed from Jeff Miller was that I was told so by special counsel.

Senator LIEBERMAN. I understand that, and that will be for us to determine, presumably from Mr. Miller or others.

In the practice that you had before Judge Hastings, the one trial, the various motions you argued, did you come to know people in his chambers who, if you had made a call about this continuance, you might have talked to? You mentioned possibly a secretary or a clerk.

Mr. SONNETT. Yes, sir. I think it is fair to say that because of my practice and the fact that the great bulk of it is in Federal court in that district, I know people in the chambers of every judge on the bench. It is not unusual to pick up the phone and talk to a secretary or law clerk to advise them that something will be filed or to ask whether or not there has been a ruling on something.

Senator LIEBERMAN. So if you had made a call in this case about the continuance, which I understand you do not specifically recollect, it might have been either to a law clerk or a secretary in the judge's chambers?

Mr. SONNETT. It could have been either. Yes, sir.

Senator LIEBERMAN. But in almost every case, not to the judge himself.

Mr. SONNETT. Oh, no, sir.

Senator LIEBERMAN. Just to clarify that for the record.

Mr. SONNETT. No, sir. As a matter of fact, I stay away from asking for the judge because the appearance of impropriety is something that I want to avoid.

Senator LIEBERMAN. Understood. Do you know the name of Judge Hastings' secretary at that time who might have been in a position to have received such a phone call?

Mr. SONNETT. To tell you the truth, I really cannot recall.

Senator LIEBERMAN. Do you recall Jeffrey Miller as having been the clerk at that time?

Mr. SONNETT. Well, I know that he was, yes, sir.

Senator LIEBERMAN. There is no other name that comes to mind as having served as a clerk at that time?

Mr. SONNETT. If I had called, it would be possible for me to have talked to about anybody that answered the phone. The only purpose for my doing that would be to advise the court of what I intended to do at the hearing, just for scheduling purposes. So it would not have made much difference who I talked to as long as the message was passed.

Senator LIEBERMAN. Thank you, Mr. Sonnett.

Thank you, Mr. Chairman.

The CHAIRMAN. Are there other questions from the committee?

Senator LEAHY. Just one.

The CHAIRMAN. Senator Leahy.

Senator LEAHY. You talked about speaking to the prosecutor when you got there. You had driven up from Miami that morning or that noon hour, whatever. You got there to the courtroom for the early afternoon procedure. You met the prosecutor outside the courtroom, and you told him you were going to move for a continuance. Still, it was a few minutes before you went in. Did you say anything to anybody else? I mean the judge's secretary walking through, a reporter, the court reporter, bailiff or anything else, saying "I am going to move for a continuance. We are not ready to go forward on this thing" or "Do not plan to stay around for the whole afternoon because I hope to get a continuance," or anything like that?

Mr. **Sonnett**. I could have, Senator. I wish I had a better recollection of that. It simply was not——

Senator **Leahy**. I understand. I realize it was a long time ago, but I think you understand the reason for my question. I want to see if somebody else knew. I mean, if the word could have gotten back to chambers, it could have gone anywhere else.

Mr. **Sonnett**. Well, it certainly is conceivable, Senator, that I could have stopped in chambers when I arrived at the courthouse and notified them. I may very well have said something to somebody else that was there. I know I talked to my clients before the hearing.

Senator **Leahy**. You just do not know.

Mr. **Sonnett**. The motion for continuance itself at that time, at least, was not a major event. There is a judge who is now on the Eleventh Circuit Court of Appeals who was then a trial judge and used to say that he thought that perhaps I ought to limit my practice to motions for continuance. I mean, it was not unusual for me to make that kind of a motion. And when the motion was well taken, it was not unusual for a judge to grant it.

Senator **Leahy**. And it was obvious you were the lawyer who was going to be there?

Mr. **Sonnett**. Yes, sir.

Senator **Leahy**. Thank you.

Thank you, Mr. Chairman.

The **Chairman**. Are there other questions by any member?

[No response.]

The **Chairman**. If not, is there any reason this witness cannot be excused at this point?

Mr. **Synar**. Mr. Chairman, the House managers request if we could ask one further question of this witness, if it would be in order.

Mr. **Anderson**. No objection.

The **Chairman**. We will permit that.

FURTHER DIRECT EXAMINATION

Mr. **Synar**. Mr. Sonnett, you have testified at great length today. You have testified that you like to play by the rules. Your resume has been introduced into the record that you were a U.S. Attorney. If anyone has examined that resume, you also have a tremendous pedigree.

Whether or not this was a rainmaking scheme, as you have testified to or at least your opinion of, or whether or not it was a serious conspiracy to bribe a Federal judge, this is an illegal activity. How do you explain that you do not have a professional obligation and professional responsibility to report this?

Mr. **Sonnett**. Well, when I first got the call, I thought I did have a professional responsibility to report it.

Mr. **Synar**. Why did you not do it?

Mr. **Sonnett**. I think we ought to make a distinction here. There are some complicated issues of lawyer-client privilege and whether or not, without violating the privilege, I can divulge such information without the permission of my client. In any event, my clients gave me permission, and it was my intent to report it to Mr. Deichert. That was my first reaction and the reaction of my clients.

The only reason that I did not report it to Mr. Deichert is that both of my clients and I believed it to be meaningless.

Mr. SYNAR. But you did not know that for three days, did you not, Mr. Sonnett?

Mr. SONNETT. I am not sure I understand your question.

Mr. SYNAR. In other words, on the 13th, you did not know that it was meaningless. It was not until the 16th that your clients had come back and told you they thought it was meaningless. So three days expired.

Mr. SONNETT. No. I had a conversation with my clients when they first reported it to me in which we explored the options and possibilities. What could this mean? Was it a serious corruption attempt? Was it a setup? Was it a ripoff or a scam? And our feeling even on the 13th was that there was probably nothing to it.

Mr. SYNAR. But the point is that whether or not there was nothing to it, whether it was a rainmaking scheme by Mr. Borders, or whether or not it was serious, you have a professional responsibility to report that, do you not?

Mr. SONNETT. Well, I certainly would have a professional responsibility to report anything that I thought was a serious violation or breach of the law or of ethics, and that is what I was trying to do in advising my clients that it should be reported.

Mr. SYNAR. Whether or not it was a rainmaking scheme or a serious bid for conspiracy for bribery, it is illegal activity which should be reported. Is that correct?

Mr. SONNETT. If it is serious and if it is real, then it may very well be an illegal activity. And I have had situations, Congressman, in which that kind of an approach has been made and which, in fact, resulted in our reporting the activity to the authorities and an investigation being conducted of a judge, who, by the way, was cleared because it was learned that a lawyer was rainmaking.

I do play by the rules, and had I thought for a moment that there was anything to this contact by Moscato, I would not have hesitated to report Judge Hastings and let the chips fall where they may. And as you know, when Mike Levin of the Strike Force called me to report Borders' arrest to me, just on the off chance that there might be some connection I immediately reported it to him and arranged for both my clients and myself to cooperate.

Mr. SYNAR. Thank you, Mr. Sonnett.

The CHAIRMAN. Are there other questions of this witness?

[No response.]

The CHAIRMAN. Is there any reason this witness cannot be excused?

[No response.]

The CHAIRMAN. Mr. Sonnett, we appreciate your testimony very much, and you are excused.

Mr. SONNETT. Thank you, Mr. Chairman.

[Witness excused.]

The CHAIRMAN. Would the House present their next witness, please?

Mr. **Bryant**. Mr. Chairman, before we call our next witness, the House managers will bring forward what has been marked for identification as House Exhibit 1A. Coming forward at this time is the chart which we call the "Master Chronology." It begins in December 1980, and it charts the events in this case through October 1981. It is one of our demonstrative exhibits, and it sets forth the evidence in our case.

In your exhibit notebooks behind Tabulation 1 is a reduced copy of the chart for your review, which I would refer you to at this time, along with a copy of our other two charts and the key to being able to read it. Please note that the reduced version of the Master Chronology is in two parts. The first page of that reduced version is December 1980 through May 1981, and the second page of it is June through October 1981.

You will note that all the entries in orange are related to the case of Tom and Frank Romano that was pending before Judge Hastings. An entry in blue has to do with an airplane flight. The entries in yellow are phone calls between the telephones of the identified persons. And the entries in white are other events.

The House managers will use this chart three times during the presentation of our direct case. At this time, we have uncovered all of the entries that have been established by the witnesses who have testified before you to date and by the House exhibits and the stipulations that have been offered and accepted into the record. The entries in the chart are December 23rd, the conviction of the Romanos; December 30th, the *Romano* forfeiture hearing; February 20th, the *Romano* forfeiture hearing; the March date on which William A. Borders asks Dredge about the Romanos; the March 5th through 8th period in which Dredge was in Washington, D.C.; the April 7th meeting between Dredge and Brother Moscato; the April 7th through 11th meeting—a call, that is, from Moscato to Romano; the April 7th through 11th date when the Romanos are in California; the April 8th date when the *Romano* forfeiture issue was submitted; the April 9th event of collect calls to Dredge's business from Maryland; the April 13th matter of Romano reporting the Moscato contact to Neal Sonnett; the April 23rd event in which the Romanos' sentencing was set for May 11th; the May 4th event in which the first *Romano* forfeiture order was entered; the May 10th event in which Dredge was arrested; the May 11th event in which the *Romano* hearing, including the sentencing, was postponed; the June 1st event in which the *Romano* hearing, including the sentencing, was rescheduled for July 8th; the June 16th phone call at 5:24 p.m. from William Dredge to William Borders; the June 18th phone call at 11:56 a.m. from William Dredge to William A. Borders; the June 19th matter in which the *Martino* opinion was issued; the June 7th event—that is to say, the *Borders* v. *Reagan* order; the June 28th matter, the Dredge and Trafficante meeting at Nesline's apartment; the June 8th matter of the Trafficante—I am sorry, that should not be uncovered—the July 8th matter with regard to the *Romano* case in which the *Romano* forfeiture was confirmed and sentencing took place; the August 31st phone call at 5:42 p.m. from William Dredge to William A. Borders; the October 6th event in the *Romano* case in which the *Romano* order was mailed special delivery.

At this time, before you represents all of the events, phone calls, and activity in the *Romano* case which has been testified to or in some other effect offered into evidence and admitted into evidence at this point in the case.

The CHAIRMAN. Is there objection by respondent's counsel to the use of this exhibit, or should we—I believe our earlier ruling was that we would wait until the exhibit was actually used with a witness and at that time entertain objections to specific parts of it. Did counsel want to——

Mr. ANDERSON. Mr. Chairman, I was unaware that this was coming forward. It raises a couple of things. I do not think all of these events have been established. Some of them I agree have been. I think they may be misleading contexts, but I have not really had a chance at this angle. I do not want to interpose myself to see which ones have been put forward.

The introduction of this exhibit at this time is, in effect, a roving summary of the evidence, and I intended to suggest at the end of the week to the Chair that the committee might consider whether it would be useful to allot 10 minutes at the beginning of each week for the managers and myself, as has been done at trials, to deliver accounts of where we think we have been or where we are going. But as far as this, I just have not seen what has been uncovered yet, and at this angle I still cannot.

The CHAIRMAN. At this point we will not admit the overall exhibit into evidence. I think if you have a witness you would like to put on the stand who would testify as to specific items, at that time we will consider whether particular items should be uncovered on the demonstrative exhibit.

Mr. BRYANT. Mr. Chairman, our purpose was not to offer this into evidence at this time. Our understanding was like yours, that originally Mr. Anderson had stated he would object at the time at which we offered it into evidence if he found something objectionable about it. We offer it at this time to present the committee with a clear picture of the evidence that has been offered into the committee's record at this point. And at this stage, we would——

The CHAIRMAN. Well, I do think it is by way of summary, and Mr. Anderson has not had a chance to review it to see if he wants to disagree with your summary. I think if you would go ahead with your witnesses at this point, that would be most useful.

Mr. BRYANT. That was our intention.

At this time, Mr. Chairman, the House would call as its next witness Martha Rogers.

The CHAIRMAN. Would you please raise your right hand? Do you, Martha Rogers, swear and affirm that the evidence you shall give in the case now pending between the United States and Judge Alcee L. Hastings shall be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. ROGERS. I do.

The CHAIRMAN. Please be seated.

TESTIMONY OF MARTHA ROGERS

DIRECT EXAMINATION

Mr. **Bryant**. Ms. Rogers, thank you for being here. Would you please state your full name?

Ms. **Rogers**. It is Martha Rogers, Marty Rogers.

Mr. **Bryant**. What is your profession?

Ms. **Rogers**. I am a white-collar criminal defense lawyer with Arent, Fox.

Mr. **Bryant**. Thank you. And were you employed as an attorney in 1981?

Ms. **Rogers**. Yes, I was.

Mr. **Bryant**. For whom did you work at that time?

Ms. **Rogers**. I worked for the Organized Crime and Racketeering Section at the Department of Justice.

Mr. **Bryant**. How long did you work at the Department of Justice?

Ms. **Rogers**. In the Organized Crime and Racketeering Section?

Mr. **Bryant**. No. In all.

Ms. **Rogers**. Oh, in all. In 1977, I began at the U.S. Attorney's Office for the District of Columbia, which is part of the Department of Justice; and then I worked at the Organized Crime and Racketeering Section for two years as a trial attorney; and then I worked as an Assistant U.S. Attorney in Miami for a year; and then I worked for four years at the Tax Division in the Criminal Section of the Justice Department, so 10 years.

Mr. **Bryant**. Were you assigned to the Miami office, then, in 1981?

Ms. **Rogers**. Yes.

Mr. **Bryant**. What case were you assigned to?

Ms. **Rogers**. I was assigned to a grand jury investigation of the Laborers International Union of North America and some organized crime figures from Chicago and Florida, including Santos Trafficante.

Mr. **Bryant**. All right. As well as his co-defendants?

Ms. **Rogers**. Yes. There were 15 co-defendants.

Mr. **Bryant**. Who was Santos Trafficante?

Ms. **Rogers**. Mr. Trafficante was a powerful organized crime boss who ran south Florida on behalf of the organized crime interests.

Mr. **Bryant**. And what was his reputation with regard to making sure that his wishes were followed?

Ms. **Rogers**. Mr. Trafficante's reputation was that he knew how to make an offer you cannot refuse.

Mr. **Bryant**. Thank you. Were you involved in the return of the indictment, then, in the Trafficante case?

Ms. **Rogers**. Yes, sir, I was.

Mr. **Bryant**. All right. Let me show you what has been premarked as House Exhibit 216. I will ask you if you recognize it.

Ms. **Rogers**. Yes, sir, I do.

Mr. **Bryant**. Can you identify it?

Ms. **Rogers**. Yes. It is the indictment that we returned in this case that we were investigating. It was the United States of America versus 16 co-defendants.

Mr. **Bryant**. At this time, Mr. Chairman, we offer this exhibit into evidence.

The **Chairman**. Is there objection?

Mr. **Anderson**. No, sir.

The **Chairman**. It will be admitted.

[The document referred to was marked House Exhibit No. 216 and was received in evidence.]

Mr. **Bryant**. When was this indictment, the one I just showed you a copy of, returned?

Ms. **Rogers**. On June 3, 1981.

Mr. **Bryant**. And to whom was the case assigned?

Ms. **Rogers**. It was assigned to Judge Hastings for trial.

Mr. **Bryant**. Do you know the date it was assigned to Judge Hastings?

Ms. **Rogers**. Yes. It was the same day that we returned the indictment: June 3, 1981.

Mr. **Bryant**. I would like to show you House Exhibit 204. Please identify what House Exhibit 204 is.

Ms. **Rogers**. Exhibit 204 is a transcript of a hearing in the indictment that we just referred to, 81-230-CR-ALH. It is a hearing that occurred on July 8, 1981, before Judge Hastings.

Mr. **Bryant**. Thank you. We would like to offer this in evidence as well.

Mr. **Anderson**. Mr. Chairman, could we have a proffer on relevance of this? I had understood the Articles of Impeachment to refer to a case called *Romano,* and we now have the indictment and are appearing to get a transcript of hearings from the case called *United States*——

The **Chairman**. I cannot hear counsel. Could counsel speak up so the full committee can hear you?

Mr. **Anderson**. My apologies. I want to submit to the committee—I want to get a proffer on relevance on this one. I thought Article I addressed and was confined to a case called *United States* v. *Romano.* I too have heard of Mr. Trafficante's reputation. I am not so confident that I know the man that I would want to report it; but that I am not objecting to. We thus far have the indictment and apparently a transcript of the first hearing. I am not quite sure how Mr. Trafficante comes into the case at this stage or what the relevance of this not thin transcript is to the question of whether there was something going on with the Romanos.

The **Chairman**. I think the point is well taken. Could counsel—Congressman Bryant, could you explain to the committee the relevance of the evidence that you are trying to introduce in the exhibit?

Mr. **Bryant**. Yes, Mr. Chairman. The transcript which we offer, first of all, makes clear that this case was pending, that there was action in this case; second, Judge Hastings' defense apparently is that Mr. Borders was involved by himself in a rainmaking scheme.

In assessing that, it is important for the Senate to determine whether it is reasonable to believe that such a "rainmaking" scheme existed. This transcript, I think, demonstrates that there was action in this case, that there were multiple defendants, and we find it to be probative and relevant for that purpose.

The CHAIRMAN. If the point is to demonstrate that the case did exist and that there were numerous defendants in it, why doesn't the indictment that has already been admitted fill that need?

Mr. BRYANT. Because this shows that it was an active and ongoing case, Your Honor, not just a case that there had been an indictment issued in that was going no place.

I can find absolutely no way in which the respondent could argue that it could be prejudicial to him, so I'm not sure I understand why he would object.

The CHAIRMAN. Is there a continued objection by counsel?

Mr. ANDERSON. Well, there's an objection and a response. I mean, certainly, the case existed, and the indictment shows that it had a lot of defendants; the indictment shows that. If they want to show it as an active case, put in the docket.

This is, I take it, a series of assertions by persons unrelated to this, and it is going to be a long transcript. The docket will show it is an active case and will show this group the entire activity both during the time it was assigned to Judge Hastings, after the time it was assigned to Judge Hastings, without putting in a lot of testimony to show that, in the Government's view, some of these people were very bad people. I assume they were. Some of them were actually convicted. Some of them weren't. But why we need transcript of hearings that ante-date even by the ubiquitous mix of Dredge's report the kinds of activities—I'm just at a loss as to why we need a transcript of a hearing from Trafficante.

Mr. BRYANT. Mr. Chairman, if they were very bad people, it would have a bearing on whether or not Mr. Borders was willing to enter into an effort to defraud these very bad people and expect to be able to walk away from that effort to defraud them in a healthy physical state.

Second——

The CHAIRMAN. Are you offering this as evidence of the facts that are stated in this transcript?

Mr. BRYANT. We are not.

The CHAIRMAN. What are you offering it for, again?

Mr. BRYANT. We are offering it to show that this is an ongoing and active case, that there was a hearing in this case on July 8, and this is proof of the fact that there was a hearing on that date.

The CHAIRMAN. Will counsel for Judge Hastings stipulate that this was an active and ongoing case and that there was a hearing on that date in the case?

Mr. ANDERSON. So stipulated.

The CHAIRMAN. Then we would deny the admission of the exhibit.

Mr. BRYANT. That's fine with us, Mr. Chairman, with that stipulation—the stipulation being, as I understand, that there was an active and ongoing case with regard to Santos Trafficante and the other defendants listed including Anthony Accardo; is that correct?

Mr. ANDERSON. Whoever is in the—there was an ongoing case against every defendant named in the indictment, and there was a hearing on June 8th.

The CHAIRMAN. July 8th.

Mr. ANDERSON. July 8th, right.

Mr. **Bryant**. OK. Ms. Rogers, in 1981, were you involved in an investigation concerning Judge Hastings, Judge Alcee Hastings, and the Trafficante case?

Ms. **Rogers**. Yes, sir, I was.

Mr. **Bryant**. How did you become involved in this investigation?

Ms. **Rogers**. I became involved in the investigation because on July 20th, I received a call from the Assistant United States Attorney over in the Southern District of Florida, who called me to say that there was a man there who wanted to talk about Trafficante, and was that the case I was working on with the Organized Crime Strike Force, and I said yes, send him over.

Mr. **Bryant**. Did the informant who told you about the alleged Trafficante bribe give you his name?

Ms. **Rogers**. When the man came over, he did not want to give me his name initially; he did not really want to say much about himself.

Mr. **Bryant**. Did you eventually learn who he was?

Ms. **Rogers**. I did.

Mr. **Bryant**. All right. Who was he?

Ms. **Rogers**. His name was William Dredge.

Mr. **Bryant**. Now, did Mr. Dredge give you any details concerning how this bribe was being solicited?

Ms. **Rogers**. Yes, he did.

Mr. **Bryant**. Would you give us those details?

Ms. **Rogers**. Yes. He told me that he had been in a position to hear that a prominent Washington lawyer was involved in soliciting a bribe on behalf of Judge Hastings from Mr. Trafficante in connection with the indictment that we just moved into evidence.

Mr. **Bryant**. Did he identify that prominent Washington attorney at first?

Ms. **Rogers**. No, sir, he didn't.

Mr. **Bryant**. What action did you and your office take as a result of the information which Mr. Dredge offered?

Ms. **Rogers**. That evening, July 20th, we met with the U.S. Attorney for the Southern District of Florida, some FBI agents, one of the prosecutors on my case with me, and we discussed among other things what I've just told you, but also an additional piece of information that Mr. Dredge had given me that we wanted to discuss was he told me that in addition to Judge Hastings soliciting a bribe in the Trafficante matter that Mr. Dredge had also been asked by Mr. Borders to approach the Romano brothers, who had been convicted in front of Judge Hastings in another trial, and ask the Romanos for $150,000 in exchange for which the judge would give them probation.

Mr. **Bryant**. Now, what action did the office take as a result of this information?

Ms. **Rogers**. As a result of this information, we all met that evening to try and figure out what we should do. And Mr. Dredge had given me some information about this prominent Washington attorney, indicating when he would be arriving in Miami and indicating when he would be leaving from Miami. So as a consequence, we asked the agents to go get the manifest from the airlines, and I was supposed to—since I happened to be from Washington, but working in Miami—that if we got the manifest, I might be able to figure out who the prominent Washington lawyer was.

Mr. **Bryant**. Did you do that?

Ms. **Rogers**. I did.

Mr. **Bryant**. And what familiar name did you find on the manifest?

The **Chairman**. Could I interrupt at this point? The Senate is halfway through a vote, and we will need to recess at this time for about 15 minutes, and then we will reconvene and continue with this direct examination.

[Recess.]

The **Chairman**. The committee will reconvene.

Congressman Bryant, would you continue with the direct examination of Martha Rogers?

Mr. **Bryant**. Yes, Mr. Chairman.

Ms. Rogers, at the time of the break, I believe you had just testified that you had learned that the informant in your office was a man who identified himself as William Dredge; is that correct?

Ms. **Rogers**. Yes, sir.

Mr. **Bryant**. And you had testified also that he began to provide you with details concerning a bribery attempt involving Judge Alcee Hastings and cases in his court involving Santos Trafficante and Frank and Tom Romano; is that correct?

Ms. **Rogers**. Yes, sir, that's correct.

Mr. **Bryant**. I believe you had also testified at the time of the break that he had told you that the next day, a prominent Washington attorney would be flying down from Washington to meet with Santos Trafficante; is that correct?

Ms. **Rogers**. That's correct.

Mr. **Bryant**. All right, let me ask you to pick it up at that point. What actions did you and your office take as a result of the information that he had given you that this prominent Washington attorney was going to fly down to Florida?

Ms. **Rogers**. Among the things that Mr. Dredge told me was that this prominent Washington attorney was going to be flying down on July 21st from Washington and that he had to fly back to Washington that night because he had a court commitment on Wednesday, or whatever the day was, July 22nd. So as a consequence of that information, and still not knowing who the prominent Washington attorney was, we all met that evening—the U.S. Attorney and the head of the Strike Force and all of us—to figure out what to do. And among the things we thought we should do was to subpoena the manifest of the airlines to see if we could find a flight that was coming down on the afternoon of the 21st with the same person going out the evening of the 21st through Atlanta back to Washington.

So the agents went and got the manifest from the airlines because, since I was from Washington and had lived here for a long time before I went to Miami, we thought I might be able to identify who the prominent Washington attorney was by looking at the manifest.

Mr. **Bryant**. And did you recognize the name of a prominent Washington attorney that fit the description, that fit the category that you just enunciated?

Ms. **Rogers**. Yes, I did.

Mr. **Bryant**. And who was that?

Ms. **Rogers**. William Borders, Jr.

Mr. **Bryant**. All right. Did your office, in conjunction with the FBI, work out a plan to attempt to corroborate the information that Mr. Dredge had brought to you?

Ms. **Rogers**. Yes. Since Mr. Dredge had said that this prominent Washington attorney would be arriving on a flight on July 21st, and we now had the airline manifest, and we now knew which flight it was, I went out to the airport to identify Mr. Borders so that the FBI could put him under surveillance and see if he met with Santos Trafficante, as he was supposed to on the evening of July 21st.

Mr. **Bryant**. OK. You went to the airport with the FBI; is that correct?

Ms. **Rogers**. Yes, with an FBI agent who was dressed like a tourist, and we went out to the gate at the airport, and we watched the people get off the plane, and I identified Mr. Borders.

Mr. **Bryant**. You identified Mr. Borders getting off the plane; is that correct?

Ms. **Rogers**. That's correct.

Mr. **Bryant**. All right. Did the FBI continue the surveillance from there?

Ms. **Rogers**. Yes, they did.

Mr. **Bryant**. All right. Let me ask you this final question. Based on your knowledge of Santos Trafficante, would it make any sense to you for an individual to take money from Santos Trafficante knowing full well that he had no power to deliver upon a promise he had made in return for the money?

Ms. **Rogers**. No, it would make——

Mr. **Anderson**. Objection. Relevance. The House has not accused Alcee L. Hastings of——

The **Chairman**. Could you please speak a little louder?

Mr. **Anderson**. I apologize. The House has not accused Judge Hastings of being a participant in a scheme with respect to Santos Trafficante. We have not put in our defense. If there is any relevance to this in rebuttal, perhaps it will come in then. But at this point, I have a sense that a grease paint brush of matters that were not alleged in the Articles of Impeachment are now being opened up, and this somehow is becoming a charge that there was a conspiracy with respect to Mr. Trafficante that implicates Judge Hastings, when it point of fact that was not alleged by the House in its Articles.

I realize there is a great deal of background information, but the House had, I think, even by their standards, ample time to put together their Articles and decide on what theory they were going to try this case. It does not, in Article I, mention Trafficante. It is highly prejudicial if they are going to drag in any case that they could tie and use that to paint this picture the way they want to paint it. I just think it's improper.

Mr. **Bryant**. Mr. Chairman, the respondent's case depends upon their characterization of William Borders and the repeated assertions that this was nothing but a—the term they use is "rainmaking" scheme—an effort to defraud defendants and Judge Hastings' court without Judge Hastings knowing about it.

I have asked a witness here, who is an expert with regard to organized crime, and particularly with regard to the activities of Santos Trafficante, who Mr. Borders was doing business with, if it makes any sense for someone to defraud Santos Trafficante, would they expect to be able to have a happy and prosperous existence after having done that.

That is my question, and it goes directly to Mr. Borders; it doesn't go to Mr. Hastings, it goes to Mr. Borders and whether or not their characterization of him as a "rainmaker" makes any sense.

The CHAIRMAN. The objection will be overruled.

The witness can respond to the question.

Ms. ROGERS. Could you ask it again?

Mr. BRYANT. I'll ask it again.

Based on your knowledge of Santos Trafficante, Ms. Rogers, would it make any sense to take money from Santos Trafficante knowing full well in advance that you had no power to deliver on the promise you made in order to get the money?

Ms. ROGERS. It would make no sense. You'd be taking a very bad risk.

Mr. BRYANT. Thank you.

I pass the witness.

The CHAIRMAN. Is there cross-examination?

CROSS EXAMINATION

Mr. ANDERSON. Very briefly.

Ms. Rogers, my name is Terry Anderson. Have we met before?

Ms. ROGERS. No, sir.

Mr. ANDERSON. Prior to the indictment in this case, had you met Santos Trafficante?

Ms. ROGERS. No, sir.

Mr. ANDERSON. So any knowledge you had came where mine and others do, from either investigative files or the newspaper; is that correct?

Ms. ROGERS. Investigative files, largely, and my work at the Organized Crime Section.

Mr. ANDERSON. Now, there did come a time, didn't there, when Mr. Trafficante filed a motion asking that his case be severed and continued on the grounds of health?

Ms. ROGERS. Yes, sir.

Mr. ANDERSON. And that is the kind of motion that sickly defendants tend to file in most—in many cases—don't they—I don't want to say most cases. There were grounds for Mr. Trafficante's motion, weren't there?

Ms. ROGERS. Yes, there were.

The CHAIRMAN. Ms. Rogers, could you just pull that microphone up a little closer? Some members of the committee are having difficulty hearing you.

Ms. ROGERS. That's unusual.

Mr. ANDERSON. And Judge Keogh granted Mr. Trafficante's motion, didn't he?

Ms. Rogers. He did. We had a doctor, a Government—you know, a doctor paid by the Government—to go and examine Mr. Trafficante, and he determined that he was very ill and could not go through with the trial.

Mr. Anderson. Mr. Trafficante was never tried, is that correct?

Ms. Rogers. Mr. Trafficante was never tried.

Mr. Anderson. And he is now dead as far as you know?

Ms. Rogers. Well, I know that he is dead, yes, sir.

Mr. Anderson. No further questions.

The **Chairman.** Is there any redirect examination?

Mr. Bryant. There is none, Your Honor.

The **Chairman.** Any questions from the committee to this witness?

Senator **Lieberman.** Just one brief question.

The **Chairman.** Senator Lieberman.

EXAMINATION BY THE COMMITTEE

Senator **Lieberman.** Ms. Rogers, how did you know Mr. Borders? How were you able to identify him as a prominent Washington attorney?

Ms. Rogers. I used to be an Assistant U.S. Attorney here, downtown, from 1977 to 1980, and Mr. Borders practiced regularly in the courts where I was an Assistant U.S. Attorney, so I knew him from there.

Senator **Lieberman.** OK. Thank you.

The **Chairman.** Any additional questions from any member of the committee?

[No response.]

The **Chairman.** If not, this witness is excused. Thank you very much for your testimony.

[Witness excused.]

The **Chairman.** Would the House please call its next witness?

Mr. Bryant. At this time, Mr. Chairman, we would call William Murphy.

The **Chairman.** Is Mr. Murphy present?

Mr. Bryant. Yes, he should be outside the courtroom.

[Pause.]

The **Chairman.** Mr. Murphy, would you raise your right hand, please?

Do you, William Murphy, swear and affirm that the evidence you shall give in the case now pending between the United States and Judge Alcee L. Hastings shall be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. Murphy. I do.

The **Chairman.** Please be seated.

Go right ahead.

TESTIMONY OF WILLIAM J. MURPHY, JR.

DIRECT EXAMINATION

Mr. Bryant. Mr. Murphy, thank you for being here.

Would you please state your full name?

Mr. MURPHY. My name is William, middle initial "J.", last name Murphy, M-u-r-p-h-y, Junior.

Mr. BRYANT. And how are you employed, Mr. Murphy?

Mr. MURPHY. I am a Special Agent with the Federal Bureau of Investigation.

Mr. BRYANT. And how long have you worked for the Federal Bureau of Investigation?

Mr. MURPHY. Since 1971.

Mr. BRYANT. In the year 1981, where were you assigned?

Mr. MURPHY. To the Miami Division of the FBI.

Mr. BRYANT. And were you assigned to the investigation of a case involving the respondent here today, Judge Alcee Hastings?

Mr. MURPHY. Yes, sir.

Mr. BRYANT. Would you explain to the committee what your position was with regard to that investigation?

Mr. MURPHY. I was assigned to the matter as the case agent in the investigation.

Mr. BRYANT. As case agent, what were your responsibilities? What is a case agent?

Mr. MURPHY. Basically, an agent is assigned to each investigation for administrative purposes, and that individual would be responsible for conducting the investigation, gathering and maintaining the evidence, conducting interviews in that investigation, and dealing with the prosecutor down the road if the case went that far.

Mr. BRYANT. Did you also supervise agents in carrying out specific assignments with regard to that investigation?

Mr. MURPHY. On different occasions, yes, sir.

Mr. BRYANT. OK. When did this investigation begin?

Mr. MURPHY. In July 1981, July 21st. I was advised to proceed to the Strike Force Office, where an individual was supposed to appear who had information regarding this matter.

Mr. BRYANT. My next question was to have been what were the grounds for opening the investigation. Could you tell us?

Mr. MURPHY. Basically, the Strike Force advised our office that an individual had appeared there who supplied information regarding possible bribery in a courtroom of a Federal judge there in Miami, Judge Hastings.

Mr. BRYANT. All right. You were notified, then, by the Strike Force attorneys, including Ms. Rogers, who just testified?

Mr. MURPHY. That's correct, yes, sir.

Mr. BRYANT. All right. Had the FBI had any experience with the individual who had come to her—first, let me ask this question. Did you know who that individual was?

Mr. MURPHY. We learned his identity when we arrived at the Strike Force, and it was an individual by the name of William Dredge.

Mr. BRYANT. And had the FBI had experience with Mr. Dredge prior to his appearance in the Miami office on July 20th?

Mr. MURPHY. Basically, he was known to the FBI office from prior investigations, basically, an individual who was involved in burglary and fencing activities.

Mr. BRYANT. He was a career criminal, is that correct?

Mr. MURPHY. That's correct.

Mr. BRYANT. With a lengthy history of arrests?

Mr. MURPHY. Yes, sir.

Mr. BRYANT. OK. Did he want anything in return for the information he was offering concerning Judge Hastings?

Mr. MURPHY. When we finally interviewed him, yes, sir, he advised us that he did.

Mr. BRYANT. And what was that?

Mr. MURPHY. Basically, he advised that he had been indicted in U.S. District Court in Baltimore and that he wanted a deal in that particular case in exchange for the information that he was supplying.

Mr. BRYANT. In fact, in your experience is it unusual for a person with pending criminal charges to offer information to law enforcement officials in exchange for some favorable treatment on the charges pending against them?

Mr. MURPHY. No, sir. It is a common occurrence.

Mr. BRYANT. All right. Did the U.S. Attorney's Office make any offer to him concerning those charges pending against him in Baltimore at that time?

Mr. MURPHY. The U.S. Attorney's Office in Miami didn't, as far as I am aware.

Mr. BRYANT. Well, did any office, as far as you know, offer anything to him at that time?

Mr. MURPHY. Not in July, no, sir.

Mr. BRYANT. All right. Eventually, however, an agreement was negotiated between Mr. Dredge and the U.S. Attorney, is that correct?

Mr. MURPHY. Yes, sir.

Mr. BRYANT. All right. Do you know when that was?

Mr. MURPHY. The plea agreement was finalized and signed the evening and early morning hours of September 11th, September 12th, 1981.

Mr. BRYANT. And you were aware of the plea negotiations as the case agent, is that correct?

Mr. MURPHY. I was aware of what was going on in them during their negotiating, yes, sir.

Mr. BRYANT. Very well. Now, you said earlier that you went to the Strike Force Office with the hopes of interviewing Mr. Dredge on July 21st. Were you able to interview him on that first day?

Mr. MURPHY. No, sir.

Mr. BRYANT. Why is that?

Mr. MURPHY. We were advised by the Strike Force attorneys that he did not wish to speak with us.

Mr. BRYANT. OK. And did the Strike Force attorneys relate information to you which enabled you to start the investigation?

Mr. MURPHY. Yes, sir. The information they had up to that point was that an individual who we later determined to be William Borders was in fact listed as a passenger on an Eastern Airlines flight that would be arriving later on, the afternoon of the 21st, arriving at the Miami International Airport, and that that was the individual who was involved in the bribery scheme.

Mr. BRYANT. What steps did you take then to start the investigation?

Mr. MURPHY. We sent a surveillance team out to the Miami airport to surveil the arrival of that flight, and Ms. Rogers accompanied one of those team members to point out Mr. Borders as he deplaned.

Mr. BRYANT. Now, were you involved in the surveillance of Mr. Borders on July 21st?

Mr. MURPHY. Yes, sir, I was.

Mr. BRYANT. All right. Were you personally aware of the observations that were made at the beginning of the surveillance?

Mr. MURPHY. I was kept advised of what was occurring at the airport, either by radio or by the telephone.

Mr. BRYANT. What were the results of that surveillance earlier when the individual, Mr. Borders, arrived at the airport?

Mr. MURPHY. Basically, we were advised that he went to the concourse area where the cab stands are and gave the appearance that he was waiting for someone to pick him up, and basically, he paced back and forth in that particular area for about an hour or so and used a pay phone once or twice.

Mr. BRYANT. How long, then, totally did Mr. Borders stay at the terminal after having gotten off the plane in Miami?

Mr. MURPHY. My recollection was it was at least an hour or so.

Mr. BRYANT. And when he left the terminal, where did he go?

Mr. MURPHY. He took a taxicab to a residence that later was determined to be that of Mr. Dredge.

Mr. BRYANT. And how long did he stay at Mr. Dredge's house?

Mr. MURPHY. My recollection is that he stayed there approximately a little over an hour.

Mr. BRYANT. All right. And it was at this point that you personally began—at Mr. Dredge's house—that you personally began to observe, not through radio contact but through personal observation, the actions of Mr. Dredge and Mr. Borders, is that correct?

Mr. MURPHY. I joined up with the surveillance when both individuals were still at Mr. Dredge's residence, yes, sir.

Mr. BRYANT. OK. And did you observe Mr. Borders leave Mr. Dredge's home?

Mr. MURPHY. I observed him in a vehicle shortly after they departed, yes, sir.

Mr. BRYANT. How did he leave?

Mr. MURPHY. In a vehicle that was driven by Mr. Dredge.

Mr. BRYANT. And where did he go after he left in the car with Mr. Dredge?

Mr. MURPHY. To a shopping center that was a short distance north of Mr. Dredge's home, and at that point, Mr. Borders was let out of Mr. Dredge's vehicle, and he took a taxicab from that point to the Fontainebleau Hilton Hotel in Miami Beach.

Mr. BRYANT. When he got to the Fontainebleau Hilton Hotel in Miami Beach, who did he meet with?

Mr. MURPHY. He was in the hotel lobby area for a period of time, approximately 20–30 minutes, and after he was in the lobby for that time period, an individual entered—an individual who was identified, who I recognized as Santos Trafficante—and the two individuals shook hands and went to a small restaurant area in the hotel and had a conversation of approximately twenty minutes.

Mr. BRYANT. Twenty minutes?

Mr. **Murphy**. Fifteen, twenty minutes, yes.

Mr. **Bryant**. After 20 minutes, what did Mr. Trafficante and Mr. Borders do?

Mr. **Murphy**. They departed the hotel and went to a vehicle that was registered to Josephine Trafficante, Santos Trafficante's wife, and proceeded directly to the Miami International Airport.

Mr. **Bryant**. Was Trafficante heard to say to Borders anything in particular?

Mr. **Murphy**. An agent who was assigned to the surveillance did overhear as the two individuals walked from the vehicle to the Eastern Airline concourse, it was reported to me by that individual that he observed Mr. Trafficante and Mr. Borders shaking hands and that Mr. Trafficante used the phrasing, words to the effect, "good job"—were the two words that stick in my mind.

Mr. **Bryant**. Now, Agent Murphy, for the benefit of the committee members, who was Santos Trafficante?

Mr. **Murphy**. I think Mr. Trafficante can be characterized as a documented member involved in organized crime.

Mr. **Bryant**. Now, in your experience in dealing with organized crime cases in southern Florida, could someone expect to defraud Santos Trafficante, to take money from him in return for the promise to deliver some particular action and not deliver that action and expect to have a healthy and prosperous future afterwards?

Mr. **Murphy**. In my opinion, I would not think that that would be a wise course to follow, no, sir.

Mr. **Bryant**. OK. Now, did Mr. Dredge provide information to the FBI concerning this matter after July 21, 1981?

Mr. **Murphy**. Yes, sir. He was interviewed by myself and two other agents on July 23, 1981.

Mr. **Bryant**. And what was the next significant new information which he provided to you?

Mr. **Murphy**. Well, at that interview, sir, or later on?

Mr. **Bryant**. At that interview or later on—the next significant new information which you were given by Mr. Dredge.

Mr. **Murphy**. Well, at that interview was when Mr. Dredge supplied us with the same basic information that he supplied the Strike Force attorneys, and he also on that interview supplied us with information regarding a request by Mr. Borders to Mr. Dredge to seek out and determine what type of individuals the Romano brothers were and see if they would be agreeable to a bribery scheme.

Mr. **Bryant**. OK. Did he eventually give you information with regard to the fact that another meeting was going to take place with regard to Trafficante and Borders?

Mr. **Murphy**. Yes, sir, he did.

Mr. **Bryant**. And when did he make that report?

Mr. **Murphy**. Earlier in the week of August 21, 1981, Mr. Dredge called me at the office and advised that Mr. Borders would be travelling down to the Miami area on August 21, and that he was going to be meeting with either Mr. Trafficante or Judge Hastings regarding the bribery matter involving Mr. Trafficante.

Mr. **Bryant**. OK. Did the FBI take steps then to corroborate that information?

Mr. MURPHY. Yes, sir. It was determined that Mr. Borders did in fact have a reservation on a flight arriving on August 21.

Mr. BRYANT. Did you have surveillance start only in Miami, or did it also start in Washington, DC?

Mr. MURPHY. We had a female agent onboard that particular flight who was seated next to Mr. Borders and engaged him in some conversation and basically accompanied him on that flight, and then we observed both of them deplane at the Miami Airport.

Mr. BRYANT. Now, were you part of the surveillance team in Miami?

Mr. MURPHY. Yes, sir.

Mr. BRYANT. What did you observe or hear from other agents in the course of their radio transmissions to you?

Ms. WILLIAMS. Objection. Hearsay.

The CHAIRMAN. Could you repeat that question, please?

Mr. BRYANT. Yes, Mr. Chairman. I asked him what he observed as a member of the surveillance team, or what did he hear as the supervising agent by radio from the other agents who were also observing and radioing information to him concurrently with the actions as they made their observations of Mr. Borders on August 21st.

The CHAIRMAN. What is the House position as to the admissibility of this line of questions?

Mr. BRYANT. Mr. Chairman, the hearsay rule has an exception, which is found in Federal Rules of Evidence 803, Section 1. Number 1, reporting agents are considered to be out-of-court declarants. Statements describing the events in this case were made while the reporting agents were perceiving the events. The statements describing the events were heard by Murphy as the agents were perceiving the events, and Murphy is repeating these out-of-court statements. It is a specific exception to the hearsay rule, and for that reason, we urge the chairman to rule this to be admissible.

The CHAIRMAN. The objection is overruled.

The witness can go ahead and testify.

Mr. BRYANT. Mr. Murphy, you were in the process, based upon your testimony a moment ago, of conducting surveillance——

The CHAIRMAN. Is there an answer to that question?

Mr. MURPHY. Yes, sir. I did observe Mr. Borders and the female agent approach from the upper level to the lower level where the luggage pickup area is, and I observed Mr. Borders depart that lower level and enter a taxicab, which proceeded then in the general direction of the Fontainebleau Hilton Hotel. I advised other agents of that over the radio, and listened as they continued the surveillance of the taxicab.

Mr. BRYANT. Now, upon arrival at the Fontainebleau, what did Mr. Borders do?

Mr. MURPHY. Mr. Borders met with Mr. Trafficante on the steps of the Fontainebleau Hilton Hotel. They greeted each other and then went immediately to a vehicle that Mr. Trafficante was driving, again, a vehicle that was registered to Josephine Trafficante, his wife, and then proceeded to take the same route that the taxicab took to the Hilton, and they took the return route back to the Miami International Airport.

Mr. BRYANT. And what did Mr. Borders do at the airport?

Mr. **Murphy**. The vehicle basically took the upper level, or departure level area, and went to the last airline terminal in that area. Both individuals exited the vehicle, stood by the vehicle and talked for approximately five to ten minutes, and then Mr. Trafficante returned to his vehicle and departed the area, and Mr. Borders went inside the terminal.

Mr. **Bryant**. Now, Agent Murphy, on two separate occasions at this point, then, about a month apart, Mr. Dredge had given you information concerning anticipated contacts between Mr. Borders and Mr. Trafficante and both times, the FBI confirmed through surveillance that Mr. Borders did in fact meet with Mr. Trafficante; is that correct?

Mr. **Murphy**. Yes, sir, that's correct.

Mr. **Bryant**. And did the FBI continue to pursue the investigation of the alleged Borders/Trafficante conspiracy?

Mr. **Murphy**. Unfortunately, we didn't see how we were going to get much in the way of new information because those two individuals were meeting face to face.

Mr. **Bryant**. Now what does it mean—if Mr. Borders and Mr. Trafficante were already meeting face to face, what did that prevent you from doing?

Mr. **Murphy**. Well, basically it prevented us at that stage of knowing what they were saying. We were probably in a position where we might determine some additional information regarding that allegation, but it would have to have been something that would have been related to Mr. Dredge and he did not feel that he would be acquiring that much new information regarding that situation.

Mr. **Bryant**. Now was he willing to cooperate with you in the investigation of a Borders-Trafficante conspiracy regarding Judge Hastings' court?

Mr. **Murphy**. No, sir. He didn't want to do that at all.

Mr. **Bryant**. Why not?

Mr. **Murphy**. For what he felt was a legitimate concern for the welfare of himself and his family.

Mr. **Bryant**. Now based on your information as an FBI agent, were Mr. Dredge's fears with regard to Santos Trafficante justified?

Mr. **Murphy**. From my experience I believe they were; yes, sir.

Mr. **Bryant**. Had Mr. Dredge provided you any information concerning another bribery scheme? I think you have already testified that he had, but tell us what the other bribery scheme was that he already had provided you information with regard to.

Mr. **Murphy**. Basically, Mr. Dredge stated that in the spring of 1981 he was approached by Mr. Borders up in the DC area here, Washington, DC, and that he was asked by Mr. Borders to determine what type of individuals Frank and Thomas Romano were, and then based on Mr. Dredge apparently doing some research in the Miami area through some people that he knew down there he stated that he had advised Mr. Borders that they were stand-up guys, you know, people that wouldn't talk.

Mr. **Bryant**. And what had Mr. Borders asked Mr. Dredge to say to the Romano brothers once he found out that information?

Mr. MURPHY. Basically, he wanted Mr. Dredge to relay information to them that for an amount of money they would be able to have their case handled.

Mr. BRYANT. Did the FBI and the Public Integrity Section of the Department of Justice pursue the allegations with regard to Judge Hastings' court and the *Romano* case and Mr. Borders?

Mr. MURPHY. Yes, sir, we did.

Mr. BRYANT. What plan did you develop to investigate those allegations?

Mr. MURPHY. A plan was established where we would attempt, because of representations made by Mr. Dredge, that Mr. Borders did not know what the real Romanos looked like, we proceeded to put together an undercover plan to see if we could either prove or disprove the allegations that we were receiving.

Mr. BRYANT. Did you decide that you would find someone—you mentioned that Mr. Borders did not know what the Romanos looked like; isn't that what you just said?

Mr. MURPHY. Yes, sir.

Mr. BRYANT. As a result of that, did you decide to get someone to portray the Romano brothers, or one of them?

Mr. MURPHY. Yes, sir; that's correct.

Mr. BRYANT. What role was Mr. Dredge to play in that plan?

Mr. MURPHY. All Mr. Dredge was going to be willing to do was make an introduction between our undercover agent posing as one of the Romano brothers with Mr. Borders.

Mr. BRYANT. And what was the undercover agent going to demand from Mr. Borders with regard to the judge?

Mr. MURPHY. We were, hopefully, going to get some type of show of proof that Mr. Borders—because that would be the first step in the plan, was some show of proof that would indicate that Mr. Borders was in fact in with Judge Hastings on this matter.

Mr. BRYANT. Did Mr. Dredge advise you along the way in ways that helped you plan this undercover operation?

Mr. MURPHY. Only in terms of setting up the first meeting.

Mr. BRYANT. Had he been in touch with you, with Borders, and had he told him that the *Romano* case was still alive?

Mr. MURPHY. Yes, sir. He advised us at different times that Mr. Borders back in the spring could not believe that the Romanos wouldn't go for this deal. He basically advised that Mr. Borders was pushing him to try and get the Romanos to respond to his overture.

Mr. BRYANT. Your Honor, we are on the second bell—Mr. Chairman, we are on the second bell of a House vote.

The CHAIRMAN. The committee will stand in recess for approximately 12 or 15 minutes until you can return.

[Recess.]

The CHAIRMAN. The committee will reconvene. We will continue with the direct testimony of Mr. William Murphy.

Representative Bryant, if you would continue, please.

Mr. BRYANT. Agent Murphy, you testified before the recess that a plan was developed to investigate the allegation with regard to bribery in the court of Judge Alcee Hastings involving the *Romano* case.

Would you tell again what the plan was that was developed?

Mr. MURPHY. Basically, it was a several part plan, but the initial stage, the first step, would be for us to have someone cooperate and portray the role of Frank Romano in this meeting with William Borders to see what he had to offer. And we ended up selecting an individual who was a retired Federal agent, special agent with the FBI, a man by the name of Paul Rico.

Mr. BRYANT. Prior to this time Mr. Dredge told Borders that the Romanos were now showing some interest in the deal, did he not?

Mr. MURPHY. Yes, sir, that is correct.

Mr. BRYANT. What was Mr. Borders' response to Mr. Dredge's statement that the Romanos were beginning to show interest?

Mr. MURPHY. My recollection is that they were still ready to do it whenever—they wanted to meet initially. He had expressed surprise that the Romanos weren't interested, but later on in the summer the deal apparently was still alive.

Mr. BRYANT. What about the fact that after July 8th the Romanos had already been sentenced? What did Mr. Borders say with regard to the fact that they had already been sentenced?

Mr. MURPHY. Well, that basically was the deal that the Romanos were looking for, that was going to be looked for in this undercover scenario, and that would be that us through Mr. Rico portraying Frank Romano would pay an amount of money to get the three-year sentence that the Romano brothers had been sentenced to reduced.

Mr. BRYANT. Now, in the course of the conversations between Mr. Dredge and Mr. Borders, did Mr. Borders tell Mr. Dredge who he wanted to deal with to set up the bribe?

Mr. MURPHY. As the summer developed and the conversations were had between Mr. Dredge and Mr. Borders, it was related to us that he wanted to deal only with the real Romanos and not a middle man.

Mr. BRYANT. Approximately when were these conversations taking place?

Mr. MURPHY. During the summer of 1981, but in particular toward the end of August.

Mr. BRYANT. Agent Murphy, did the jury at Judge Hastings' criminal trial hear testimony from you on any of the facts that you have told us up until now?

Mr. MURPHY. At Judge Hastings' trial we were limited by the dates of our indictment and the jury did not hear most, if not all, of what we have discussed so far prior to September 10th.

Mr. BRYANT. Thank you. Now based on this information that you had obtained up to this point in your investigation, did you choose a person to play the role of one of the Romano brothers?

Mr. MURPHY. Yes, sir. Mr. Paul Rico.

Mr. BRYANT. How did you make the choice? How did you settle on him?

Mr. MURPHY. Because of the fact that the real Romano brothers were in their early sixties, I believe, at the time, we were limited in trying to have an agent who was on active duty try and play the role of one of them. We also knew that there were a number of retired agents living in the south Florida area, and after reviewing some photographs of agents who had retired from the division and from talking to other agents in the division who had been around for a period of time several were talked about and Mr. Rico, because when he was on active duty had done some undercover work, it was decided to approach him and ask him if he would cooperate.

Mr. BRYANT. All right. And you said that H. Paul Rico, a retired agent, was chosen to be that undercover operative; is that correct?

Mr. MURPHY. We asked him if he would cooperate and he said that he would; yes, sir.

Mr. BRYANT. What was his background?

Mr. MURPHY. He was a Federal Bureau of Investigation agent for approximately 20 years and he retired probably two or three years before I got to the Miami Division, and I hadn't met him before then. But other agents who I was dealing with knew him, and at that point in time he was the—in 1981, he was the general manager of the Miami Jai Alai.

Mr. BRYANT. All right. Did Mr. Dredge then cooperate in the execution of the undercover plan that you were putting together?

Mr. MURPHY. Yes, sir.

Mr. BRYANT. Tell me what he did to assist in the execution of the plan?

Mr. MURPHY. Basically, he agreed to assist us in portraying the role of Frank Romano. He was instructed to——

Mr. BRYANT. My question was, tell us what Mr. Dredge did in an effort to help you carry out the undercover plan?

Mr. MURPHY. Basically, Mr. Dredge's involvement at that stage was that he was going to make an introduction between Mr. Rico, the undercover agent, and Mr. Borders, and make that introduction as if Mr. Rico was Frank Romano, and then he was supposed to remove himself from the situation.

Mr. BRYANT. Now how did you set up the introduction?

Mr. MURPHY. On Thursday, September 10th, I was with Mr. Dredge when he dialed Mr. Borders' number in Washington, and at that phone call was when the location was decided upon for the first meeting.

Mr. BRYANT. Had he previously tried to call Borders?

Mr. MURPHY. I am sure he talked with Mr. Borders on occasion during the summer months, and I believe the toll records will reflect that he talked to him the Wednesday of that week.

Mr. BRYANT. Were you present when those calls were made?

Mr. MURPHY. I don't recall for sure if I was there on the Wednesday phone call. I know we did try once, and I believe that was the occasion when Mr. Borders wasn't in his office, so the call was made on September 10th.

Mr. BRYANT. The following day.

Mr. MURPHY. Yes, sir.

Mr. BRYANT. What was the result of the conversation that was had then on September 10th between Mr. Dredge and Mr. Borders?

Mr. MURPHY. Mr. Dredge stated that Mr. Borders would meet with one of the Romanos on Saturday, September 12, 1981, at the Ionosphere Club, which is the Eastern Airlines hospitality club at the Miami International Airport, at approximately 8:00 a.m.

Mr. BRYANT. And Dredge was to introduce Borders to the man Borders thought was Frank Romano but who really was H. Paul Rico, the undercover agent; is that correct?

Mr. MURPHY. That is correct.

Mr. **Bryant**. Did the FBI obtain telephone records for William Borders and Judge Hastings for September 10th, the day of the phone call, the successful phone call from Mr. Dredge to Mr. Borders?

Mr. **Murphy**. Yes, sir, we did.

Mr. **Bryant**. At this time I would like to show to you what have been previously marked as House Exhibits 27 and 28.

Mr. **Bryant**. I would like to ask you if those are the telephone toll records and message logs for Mr. Borders' office which would reflect any calls charged to those numbers or messages taken on September 10, 1981?

Mr. **Murphy**. Yes, sir, that's correct.

Mr. **Bryant**. All right. I would like to offer at this time House Exhibits 27 and 28 into evidence.

The **Chairman**. Is there objection?

Ms. **Williams**. No objection.

The **Chairman**. They will be admitted.

[The documents referred to were marked House Exhibit Nos. 27 and 28 and were received in evidence.]

Mr. **Bryant**. The book containing Exhibit 28 contains another exhibit, which we will be offering later, and therefore we would like to hold on to the book for just a moment, Mr. Chairman. That is why I have brought it back over here.

The **Chairman**. It has been introduced and marked, as I understand it, is that correct?

Mr. **Bryant**. That is correct, sir.

The **Chairman**. Why don't we have the clerk mark it before we go any further?

The **Chairman**. Representative Bryant, that is the midpoint of a vote that the Senate is engaged in now on the Bumpers amendment to the immigration bill. We will have to recess, and we will return within 15 minutes, hopefully a little sooner, to begin again.

[Recess.]

The **Chairman**. The Senate will reconvene.

Representative Bryant, would you please continue?

Mr. **Bryant**. Yes, Mr. Chairman.

Agent Murphy, I had previously, before the recess, asked you about the call made by William Dredge to William Borders setting up a meeting for two days later between Mr. Borders and the man he believed, would believe was Frank Romano, who was being portrayed by H. Paul Rico.

What time of day did that call from Mr. Dredge to Mr. Borders take place?

Mr. **Murphy**. Approximately 1:29 p.m. on September 10, 1981.

Mr. **Bryant**. All right. Thank you.

Now I have previously shown you what are marked as House Exhibits 27 and 28 and asked you if those were the telephone toll records and message logs from Mr. Borders' office which would reflect any calls charged to those numbers, his office, or messages taken on September 10, 1981, and I believe you testified that that is what those exhibits were; is that correct?

Mr. **Murphy**. Yes, sir; that is correct.

Mr. **Bryant**. And September 10 is the day Mr. Dredge made the call to Mr. Borders setting up the meeting for two days later, September 12th; is that correct?

Mr. **Murphy**. That is my recollection; yes, sir.

Mr. **Bryant**. Now do those exhibits reflect any messages from Judge Hastings to Mr. Borders or any calls from Mr. Borders' offices to Judge Hastings chambers?

Mr. **Murphy**. Yes, sir.

Mr. **Bryant**. At this time, Mr. Chairman, I would like to offer into evidence Stipulations 35—I am sorry—33, 35, 36, 37, and 38.

The **Chairman**. Is there objection to those stipulations? Would you state the numbers again, please, Representative Bryant?

Mr. **Bryant**. Stipulations 33, 35, 36, 37, and 38.

Mr. Anderson. Once more, John, could you—slow?

Mr. **Bryant**. 33 and then 35 through 38.

Mr. **Anderson**. No objections.

Ms. **Williams**. No objections.

The **Chairman**. They will be admitted into evidence.

[Stipulation Nos. 33, 35, 36, 37, and 38 were received in evidence.]

Mr. **Bryant**. Mr. Chairman, Stipulation of Fact No. 33, offered into evidence at this time, is that from March through October of 1981, Cynthia Rogers was a secretary and receptionist at the law offices of William Borders.

Stipulation No. 35, offered into evidence by the House, is that on September 10, 1981, Cynthia Rogers made an entry in the telephone log at William Borders' office reflecting a call at 9:35 a.m. from Judge Hastings to William Borders, with the message "Not coming to DC today call him between 430 and today will be in his office for call."

Stipulation of Fact No. 36, offered into evidence at this time, is that on September 10, 1981, at 4:40 p.m., a call, lasting one minute or less, was placed from William Borders' law office to Judge Hastings' chambers.

Stipulation No. 37 is that on September 10, 1981, Cynthia Rogers made an entry in the telephone log at William Borders' law office reflecting a call at 5:10 p.m. from Judge Hastings to Borders with the following message: "He'll be waiting for call—Have them get him off the bench he'll also let them know if you call to get him to phone."

Stipulation No. 38 is that on September 10, 1981, at 5:34 p.m., a call, lasting four minutes was placed from William Borders' law office to Judge Hastings' chambers.

Agent Murphy, September 10 was two days—was the day Mr. Dredge called Mr. Borders and set up the meeting scheduled for September 12; is that correct?

Mr. **Murphy**. Yes, sir, that is correct.

Mr. **Bryant**. Did the FBI conduct any surveillance of Mr. Borders or Judge Hastings in anticipation of the upcoming September 12th meeting in Miami?

Mr. **Murphy**. Yes, sir, we did.

Mr. **Bryant**. When and where did the FBI conduct surveillance of Judge Hastings?

Mr. **Murphy**. Judge Hastings was hearing a trial in the old courthouse, Federal courthouse in Miami on Friday, September

11th, and agents were in that area and observed Judge Hastings leave the courthouse that day.

Mr. BRYANT. And where was his car parked that afternoon?

Mr. MURPHY. Judge Hastings got into his personal vehicle when he departed the courthouse and proceeded to the——

Ms. WILLIAMS. Objection. Unresponsive.

Mr. BRYANT. Well, what did you learn with regard to Judge Hastings' automobile as a result of the surveillance?

Mr. MURPHY. I was advised and later observed it to be parked in the short-term parking area at the Miami International Airport.

Mr. BRYANT. OK. Now, Agent Murphy, in the opening statement for the House I strongly emphasized facts relating to telephone calls——

Ms. WILLIAMS. Objection. As to what he strongly urge, Your Honor.

The CHAIRMAN. The objection will be overruled. Counsel can proceed to state his question.

Mr. BRYANT. Agent Murphy, in the opening statement for the House I strongly emphasized facts relating to telephone calls and travel arrangements made by Judge Hastings and William Borders the day before the first meeting between Mr. Borders and the undercover agent posing as Frank Romano.

Did your agency obtain airline records which indicated the travel plans of Judge Hastings and William Borders for that day?

Mr. MURPHY. Yes, sir, we did.

Mr. BRYANT. And did the FBI obtain records indicating the actual departure and arrival time of Judge Hastings' flight?

Mr. MURPHY. Yes, sir, we did.

Mr. BRYANT. And did the FBI obtain airline records indicating the actual flights taken by William Borders on Friday, September 11th?

Mr. MURPHY. That is correct.

Mr. BRYANT. I would like to show you at this time what have been previously marked as House Exhibits 29, 99, 30, 33, 34, and 35.

I will show them to you and ask you if these are the airline records showing the planned and actual air travel for Judge Hastings and for Mr. Borders on September 11, 1981, the day before the first meeting between Mr. Romano, being played by Mr. Rico, and William Borders?

Mr. MURPHY. Yes, sir, they are.

Mr. BRYANT. At this time, Mr. Chairman, we would offer into evidence the previously read exhibits.

Mr. ANDERSON. Could we have the numbers one more time, Mr. Chairman? That went by me awful fast.

The CHAIRMAN. Yes. Would you please repeat the numbers?

Mr. BRYANT. Exhibit 29, Exhibit 30, Exhibit 99, Exhibits 33, 34, and 35.

Ms. WILLIAMS. No objection.

The CHAIRMAN. The exhibits will be admitted.

[The documents referred to were marked House Exhibit Nos. 29, 99, 30, 33, 34 and 35 and were received in evidence.]

Mr. BRYANT. Now, Agent Murphy, I just asked you about airline records. Did the FBI obtain telephone records for Judge Hastings' residence and Mr. Borders' office messages for September 11, 1981, the day before the first meeting between Borders and Romano?

Mr. **Murphy**. Yes, sir, we did.

Mr. **Bryant**. That is, Borders and Rico posing as Romano.

Mr. **Murphy**. Yes, sir.

Mr. **Bryant**. Let me show you what have been marked as House Exhibits 31 and 32, and I will ask you if these are the records which would reflect calls charged to Judge Hastings' residence telephone or messages taken in Mr. Borders' office on September 11, 1981, the day of the Borders meeting?

Mr. **Murphy**. Yes, sir. These are them.

Mr. **Bryant**. At this time, Mr. Chairman, the House would offer House Exhibits 31 and 32 into evidence.

Ms. **Williams**. No objection.

The **Chairman**. Is there objection to those exhibits?

Ms. **Williams**. No objection.

The **Chairman**. They will be admitted.

[The documents referred to were marked House Exhibit Nos. 31 and 32 and were received in evidence.]

Mr. **Bryant**. Agent Murphy, I have asked you about telephone records and I have asked you about airline records. I would like to ask you now did the FBI obtain hotel records for Judge Hastings for the week of September 11 through the 13th; that is to say, for the weekend of September 11 through 13, 1981?

Mr. **Murphy**. Yes, sir.

Mr. **Bryant**. I will show you now what has previously been marked as House Exhibit 37 and ask you if this is the registration card for Judge Hastings for September 11th through the 13th?

Mr. **Murphy**. Yes, sir. It is a xerox copy of it.

Mr. **Bryant**. At this time we would offer into evidence Exhibit 37.

Ms. **Williams**. No objection.

The **Chairman**. It will be admitted.

[The document referred to was marked House Exhibit 37 and was received in evidence.]

Mr. **Bryant**. At this time, Mr. Chairman, the House would offer into evidence Stipulations 39, 40, 41, 42, 43, 44, 45, and 46. Repeat, 39 through 46 sequentially.

Mr. **Anderson**. Mr. Chairman, just a principle objection so it is noted and then we will back away on this one. But I had thought the original reason we went through the stipulation exercise was to save trial time. I understand each of the stipulations I have heard thus far has been—simply permitted the managers to give a narrative account of the exhibits they have just introduced. This is, in effect, closing argument in the middle of trial.

I have yet to hear a stipulation, and I have heard only one or two that I thought saved us a lot of trial time. We object to the use of the stipulations. We understand you have ruled on the accuracy of stipulations. End of objection.

The **Chairman**. The objection is overruled in that if there is no objection to the admission of these particular exhibits, or these particular stipulations they will be admitted.

[Stipulation Nos. 39, 40, 41, 42, 43, 44, 45, and 46 were received in evidence.]

Mr. **Bryant**. At this time, Mr. Chairman, then the House offers into evidence—it has already been received into evidence. I would read at this time the previously mentioned stipulations.

No. 39 is a stipulation that on September 11, 1981, Judge Hastings was scheduled to leave Miami International Airport at 3:48 p.m. and arrive in Washington, DC at 6:00 p.m.

Stipulation 41 is that on September 11, 1981, two calls were made from the Miami International Airport to the office of William Borders. These calls were charged to Judge Hastings' residence phone.

Stipulation 42 is that on September 11, 1981, Cynthia Rogers made an entry in the telephone log at William Borders' law offices reflecting a call at 4:20 p.m., from Judge Hastings to William Borders, with the message "Flight further delayed. Not leaving until 5."

Stipulation 43 is that on September 11, 1981, William Borders was scheduled to leave Washington National Airport for Miami, Florida, at 7:30 p.m., on Air Florida flight 131.

Stipulation 44 is that on September 11, 1981, William Borders did not take Air Florida Flight 131 for which he had reservations, and instead departed from Washington National Airport on Eastern Airlines flight 459, which was scheduled to depart at 9:20 p.m.

Stipulation No. 40 is that on September 11, 1981, Judge Hastings' flight was delayed and he actually left Miami International Airport at 5:50 p.m. and arrived at Washington National Airport at 8:04 p.m.

Stipulation 46 is that on September 11, 1981, Judge Hastings registered at the Sheraton Washington Hotel in Washington, DC, at 10:14 p.m.

And stipulation No. 45 is that on September 12, 1981, William Borders arrived in Miami, Florida, at 1:30 a.m., via Eastern Airlines Flight 655 from Atlanta.

Now, Agent Murphy, based upon your review of the exhibits as summarized in the stipulations which were just read into the record, what time did Judge Hastings arrive in Washington, what time did Mr. Borders leave Washington, and what time did Judge Hastings check into his hotel on Friday, September 11th?

Ms. **Williams**. I object. This is becoming very, very redundant. He has put in the information. He has read the stipulations of the information, and now he is asking him to again repeat the same information that both the stipulations and the exhibits cover, and I object.

The **Chairman**. The objection will be overruled. The witness can respond and summarize what his records show.

Mr. **Murphy**. The records would indicate that Judge Hastings arrived in Washington, DC, at National Airport, at approximately 8:00 p.m. on Friday, September 11, 1981, and that Mr. William Borders departed that same airport at approximately 9:20 p.m. on September 11, 1981, and that Judge Hastings would have arrived at the Sheraton Washington Hotel at approximately 10:14 p.m.

Mr. **Bryant**. Thank you. Now, Agent Murphy, where was the Sheraton Washington Hotel located in September 1981?

Mr. **Murphy**. My recollection is it is Woodley Place in northwest Washington.

Mr. BRYANT. And, if you know, how far is Woodley Place in northwest Washington from National Airport?

Mr. MURPHY. I would say it was approximately a 15-minute driving time.

Mr. BRYANT. In other words, Agent Murphy, after the phone calls and the changing of schedules of Judge Hastings and William Borders, it was exactly one hour and 16 minutes between the time Judge Hastings arrived at National Airport and the time William Borders departed National Airport; is that right?

Mr. MURPHY. Yes, sir. The records would indicate that.

Mr. BRYANT. And the Judge, who arrived at 8:04, didn't check into his hotel until 10:14; is that correct?

Ms. WILLIAMS. I object. Mr. Chair, I object. He is testifying and asking him to confirm his testimony.

The CHAIRMAN. Counsel, if you could try not to lead the witness quite so obviously it would be helpful.

Mr. BRYANT. Well, Mr. Chairman, I would just point out that the questions I asked had basically been offered into evidence already. I was simply trying to demonstrate to the panel here exactly what that evidence showed.

The CHAIRMAN. Well, if it is worth asking the questions, perhaps they could be asked in a non-leading manner.

Mr. BRYANT. Very well.

Agent Murphy, turning to the meeting scheduled for September 12th between Mr. Borders and the undercover person, Mr. Rico, did the FBI take any steps in preparation for that meeting?

Mr. MURPHY. Yes, sir, we briefed Mr. Rico at the FBI office that morning and we secreted a body recorder and transmitter on his person and we made surveillance assignments to cover this planned meeting at the Miami Airport at approximately 8:00 a.m.

Mr. BRYANT. Now, were you involved in this surveillance, either as an observer or by monitoring the reports of the agent by radio as they were made?

Mr. MURPHY. Yes, sir, I was.

Mr. BRYANT. All right. In addition to the surveillance, was there any other preparation for the meeting between Mr. Borders and Mr. Rico?

Mr. MURPHY. I observed Mr. Borders arrive at Miami Airport approximately 1:30, 1:45 a.m., on September 12th, and observed him register and check into the hotel at the Miami International Airport, and then we did make an introduction between Mr. Dredge and Mr. Rico, so that they would be aware of who each other was for this initial introduction.

Mr. BRYANT. Now, you said a moment ago that they had wired Mr. Rico; is that correct; he had recording devices secreted on his person?

Mr. MURPHY. That's correct.

Mr. BRYANT. All right. Did the FBI recover that tape recording from Mr. Rico?

Mr. MURPHY. Yes, sir.

Mr. BRYANT. At this time, I would like to show you what has previously been marked as House Exhibits 38A and 38B. Are they the tape recording and the transcript of the tape from the September 12, 1981 meeting between Mr. Rico and Mr. Borders?

Mr. Murphy. Yes, sir, they appear to be copies, yes.

Mr. Bryant. At this time, we would offer House Exhibits 38A and 38B in evidence and we would ask that the tape recording be played for the panel.

Mr. Anderson. Mr. Chairman, I apologize, we don't mean to double-team here. Ms. Williams—this is his witness, but I am the transcript person, so if the committee will indulge us on transcripts and leave the rest——

The Chairman. Is there objection to the introduction of these exhibits?

Mr. Anderson. The House tendered that transcript to us as something that was prepared by a man named Agent Shuy. How on earth—not Agent Shuy, Professor Shuy—how on earth Agent Murphy could know about that, I believe the FBI did in fact prepare a transcript of this, it was submitted at trial. This witness cannot object to that transcript. We object to the transcript. There is no objection to the tape.

Mr. Bryant. Mr. Chairman, we didn't ask—all we asked is is this a transcript of this recording.

Ms. Williams. How would he know, if he didn't prepare it?

Mr. Anderson. There is a competency question here. If you are going to testify, you either have to say, "I listened to the tape and compared the transcript," or "I prepared the tape. This is Roger Shuy." I don't mean to——

The Chairman. Representative Bryant, perhaps the witness could properly identify the transcript after we have heard the tape.

There is no objection to the tape, correct?

[No response.]

Would you tell us who's playing this for us? Can you tell us when you start, so we will be able to——

Mr. Bryant. Mr. Chairman, we should point out that you may not need the earphones. They are for your use, if you would like to use them. We will have to see how the machinery works.

[At this point, a tape recording was played.]

United States Senate
EVIDENTIARY HEARINGS
HOUSE MANAGERS' EXHIBIT 38B

I.

September 12, 1981 8:05 a.m.

UM: Bill, Frank, how ya doin?

HPR: How ya doin?

WAB: Hi, good to see you.

UM: I said, I said, Jesus Christ, ain't nobody on time.

WAB: You called him?

HPR: (Laughing)

UM: Yea, he wasn't there, you

WAB: I called at 7 and you had gone this morning.

UM: Yea, well, then, then I went and called, ah, I called her twice.

WAB: Yea.

UM: And she said that, ah, you tried, I said well, where's he at? She said restaurant, 7th floor.

WAB: Yea, yea.

UM: Okay, I'll leave you two guys together, you're in good hands.

WAB: Um hum.

HPR: Wanta have

WCD: Square your business up

HPR: a cup of coffee?

WAB: No, let's walk somewhere.

HPR: Okay.

UM: I'll talk to ya, talk to you dudes later.

WAB: You comin back or what? Let me leave this here.

UM: No. I wasn't thinkin on coming back. Do you need me for anything?

EXHIBIT
38b
HOUSE

WAB: Oh, I want to talk to you about some things.

UM: Okey doke. Well, where do you want to see me?

WAB: Why don't you just wait here, we'll get back to you.

UM: Alright.

WAB: Alright. How ya doin? What's your name again?

HPR: Frank Romano. Well, I've had some problems.

WAB: Um hum.

UM: Bill, see you later.

HPR: And I been going for a long . . .

WAB: Yea.

UM: Okay.

WAB: Huh?

HPR: . . . I was going for a long time and everything was going great.

WAB: Yea, I heard.

HPR: And then everything has fuckin' gone wrong and,

WAB: Um hum.

HPR: ah, the real problem is my, my wife has had a breast removed, a cancer and

WAB: Right.

HPR: And Jesus, ah, she just can't stand this, it's really, ah

WAB: Right. Um, I think we can help you.

HPR: I hope so.

WAB: I understand you had a problem, so you're a little leary about it.

HPR: Well, ah, I, I think that, ah, ah, lawyers have been, ah, ah, problems for me, too, you know. Just one of those things that, ah, ah, the breaks have been going against . . .

WAB: Yea.

HPR: . . . everything and, ah, taken some shots and, ah, I've been, ah, misled a few times.

WAB: Yea. OK.

HPR: So that it's, ah, really ah

WAB: Let me say this - I'm gonna make a statement, see what you say about it. I understand you lost some property, too.

HPR: Oh yes.

WAB: Ah, you know what the number is right?

HPR: Ah, I, I've heard t second hand. I haven't heard it first hand.

- Pause -

WAB: That what you hear?

HPR: Yes, one h . . .

WAB: Okay.

HPR: Right.

WAB: Now.

HPR: Right. You know as your, as you age by the way . . .

WAB: Yea.

HPR: . . . the, ah, print can become a smuckin smaller.

WAB: Yea, I write bad anyway.

HPR: (Laughs) Within

WAB: Yea, within ten days the order will be signed.

HPR: Yea. Returning what?

WAB: Substantial . . .

HPR: Yea.

WAB: . . .amount.

HPR: Uh huh.

WAB: Then the other will follow after that.

HPR: What's the last word? (UI)

WAB: You lost some property, right?

HPR: Yea, oh, yea, right. Ah, he's okay, right . . . ?

WAB: And, ah

HPR: . . . okay, fine. Good.

WAB: And, the other will come once you file a motion for mitigation.

HPR: Okay, alright.

WAB: And that's the long and short of it.

HPR: Okay. That's, that's all, that's all, ah, great.

WAB: Um hum.

HPR: My only problem is, ah, you know, how do I . . .

WAB: Checks and balances?

HPR: . . . how do, how do I, how do I know . . .

WAB: Okay, let me

HPR: . . . that, ah, that . . .

WAB: That it won't be done

HPR: This is it, right?

WAB: Okay.

HPR: Okay, the only

WAB: No, wait a minute, let me just

HPR: Okay.

WAB: You can give it to Billy and what you do, once the first part of it done, then he will give it to me. I don't get nothin until the first part is done. You understand?

HPR: Yea.

WAB: Then after that, then that will show, that will be a signal showing you that I'm, I know what I'm talkin about, right? Right?

HPR: Yea, within, within ten days.

WAB: Yea.

HPR: Right.

WAB: Okay.

HPR: Ah, now, ah, my real, my, you know, the, the fuckin real problem I have . . .

WAB: Um hum.

HPR: . . . Yeah, is, is not the fuckin time for me, I mean I think I can do this.

WAB: I'm sayin that's both, both of you all.

HPR: Yea.

WAB: It's both.

HPR: And Tom.

WAB: Yea, yea, both.

HPR: Okay, because, ah

WAB: That's, I understand, not one, both.

HPR: Both.

WAB: Right.

HPR: Okay, now, do you want the, ah, how do you want that thing handled with, ah, ah, when this happens, will that trigger the whole thing or do you, or do you want, ah, to, ah, ah, I'd like to be-, be in a, be in a position where, ah, there's, ah, something is down and something is at the end because it's, because the, the big problem is the fuckin time, you realize that.

WAB: I realize that.

HPR: Ah.

WAB: What I'm saying is this, I realize you have a problem, so that's why I say give it to him.

HPR: Oh, I got a real fuckin problem.

WAB: Yea, yea.

HPR: Ah, and, ah.

WAB: But give it to him . . .

HPR: Yea.

WAB: . . .within ten days then he will give it to me. I will hold it, till everything is done. But that way, you'll know, I don't want nothin till, so you could see, but I know him well enough, you give it to him, he says he's got it, within ten days the order will come down, then you know that because, don't want you filing a motion and withdrawin your appeal without knowin somethin gonna be done.

HPR: Yea, absolutely.

WAB: Okay.

HPR: Absolutely.

WAB: Right.

HPR: Absolutely.

WAB: Does that, that meet your satisfaction?

HPR: Well, the, ah, the ultimate goal is, ah, you know, just what I want . . .

WAB: Yea.

HPR: . . . that's, that's, ah, fuckin perfect. The only the, the only thing that I'm concerned about is, ah, ah, my, I can, I can handle Tom alright, there's no problem with that.

WAB: Um hum.

HPR: He's got to rely on my judgment.

WAB: Um hum. Um hum.

HPR: Ah, my re, ah, my knowledge of, ah,

WAB: Billy?

HPR: This partner, this, this person here is not, ah, the fuckin, ah, greatest in the world, you know, I don't have that kind of, ah, WAB: Well, what do you suggest to do?

HPR: Well, I don't mind, ah, I don't mind handling it, ah, ah, without him, wh,

WAB: Okay.

HPR: Whether, the situation is that, ah, ah, what I'd like to do is have something where I would know for sure there was some kind of a, ah, ah, indication that I know you could do it, ah, say, I understand at one time, ah, when we were discussing this possibility of, a, we thought we had somebody that's gonna

WAB: Yea, I know, we don't really have to talk about it.

HPR: Yea, yea, yea, I betcha, you know, you get fuckin jerked off so many times, but anyway, ah, I think you had made the suggestion that, ah, we name a place . . .

WAB: Okay. No sweat.

HPR: . . . and a time . . .

WAB: Okay.

HPR: . . . and that, ah, that you, the jud, your, ah

WAB: That somebody would have dinner there.

HPR: Yea.

WAB: Okay, that's fine.

HPR: And he could order, ah, you know, something, we'd know that it

WAB: Okay.

HPR: In other words

WAB: Okay

HPR: We'd know that it.

WAB: Okay.

HPR: . . . would happen. The only thing is, now, how do I know, how am I gonna get to, ah, know, ah, ah, you know, when he's available for it, ah, do you want to call me and tell me when?

WAB: No, we can set that up now. (8)

HPR: Okay, okay.

WAB: You name a place now. Wednesday of next week for dinner.

HPR: Wednesday of next week, okay. Okay, ah, how about, ah, ah, Vincent Capra's or, wa, wa, wait, how bout, how bout at the, ah, ah, any fuckin place I don't care. We can name some spot like, ah, Wednesday of next week, ah, there's a, ah, Chateau Gourmet that's right down.

WAB: Is this a clean joint, I don't want no place, you know.

HPR: Oh no, oh, no, no, no, no, no, no, no, no.

WAB: Name one of the better places in town you know.

HPR: Okay, there, your, your prob, the problem is there's so many fuckin places are closed in the off season, I'm tryin to make sure I don't give you a fuckin place that's closed on Wednesday, ah, there's a place, ah

WAB: What, what's, what's, what's one of the better, ah, hotels with a restaurant in it.

HPR: Ah, you can, ah, go to the, well, Fontainebleau or the, ah, Eden Roc or, er, ah, you can go to, ah, the, ah, how bout the Forge, the Forge Restaurant, ah, that's a little shady, ah, you stay out of there.

WAB: Yea.

HPR: Alright, the, ah, we can take a, ah, shot at, ah, um, ah, the, alright the main dining room in the, ah, Fontainebleau.

WAB: Okay, fine.

HPR: And when, that'd be Wednesday evening and would be, ah, let's say 8:00 or something like that?

WAB: 8:00.

HPR: Okay?

WAB: Um hum.

HPR: And, ah, why don't, why don't I give you a, ah, a number where you can reach me?

WAB: No.

HPR: Okay, okay, fine, fine, fine, okay.

WAB: I may not.

HPR: Alright.

WAB: That's, see

HPR: No, no, okay, okay.

WAB: Ah, okay, now

HPR: Well, I'm just sayin if somethin goes wrong...

WAB: He not gonna be around here.

HPR: ...oh, the other guy, okay, alright.

WAB: Now, ah, no, well, I just don't phones and stuff, you know.

HPR: Yea, I don't, ah, fuck, right.

WAB: Um.

HPR: I don't blame ya.

WAB: When do you want to see me after that's done?

HPR: I could see you, ah, probably, ah, Thursday, then the next day I'll, I'll

WAB: No, you can't do that, I'll be at the fight out in Vegas.

HPR: Oh yea. Okay, yea, you name it then, when's the, well, this is, this is going to, um, indicate to me that the rest is, is going to happen.

WAB: Right.

HPR: So that when the...

WAB: That's when I see you

HPR: ...when the, when the ten day is by, is gone, then I'm gonna see you.

WAB: No, see me up front, look, see that's why I was, you gotta

HPR: Put something up front.

WAB: Yea.

HPR: Right.

WAB: Right.

HPR: I will.

WAB: Yea. That's why I said when do you want to see me.

HPR: Okay, you tell me.

WAB: Ah, what about next Saturday?

HPR: Next Saturday, alright.

WAB: Okay.

HPR: Where?

WAB: Where would you suggest?

HPR: Well, make it uncomplicated, right here is alright with me.

WAB: Okay.

HPR: You know, it's just a fuckin, this is alright.

WAB: Okay.

HPR: Next Saturday, okay, and ah, then we, we should pretty near schedule anyway, something should happen within the, the, few days after that anyway.

WAB: Yea, yea.

HPR: And then, ah, the rest will follow. Now the, ah, okay, very good.

WAB: When you put (UI)

HPR: I just fuckin hope that this is, ah

WAB: Oh no. That's 100 percent, 100 percent, 100 percent.

HPR: Okay, okay.

WAB: What time?

HPR: Well, you're the person that has to travel more than me, you gi, you give me a time. I'll let you set it.

WAB: That's, at, 8:00 Wednesday night, 8:00.

HPR: 8:00, Wednesday.

WAB: Um hum.

HPR: At the, ah

WAB: Um hum, um hum. I know.

HPR: Right.

WAB: Right.

HPR: Okay.

WAB: Ah, I'll meet here 10:00.

HPR: AM?

WAB: Yea, here.

HPR: Okay, okay, very good.

WAB: Got to leave.

HPR: Okay.

* * *

Mr. BRYANT. Mr. Chairman, the House will be happy to play the tape again, if there is any concern about the early part of the tape when the technicians had the volume a little lower.

The CHAIRMAN. Does any member of the committee wish to hear the tape again?

[No response.]

I think not.

Mr. BRYANT. Mr. Chairman, on Monday of this week, the Senate ruled that the transcripts that will accompany these tapes were admissible, but could be objected to at the time of trial on the basis of relevancy, but for all other purposes were deemed admissible.

We offered the transcript of this taped conversation into evidence through Mr. Murphy for the purposes of establishing its relevancy here. If there is no relevancy objection, then we would urge the Chairman to review the order of Monday and allow us to offer the transcript and the subsequent ones into evidence, as they come up.

The CHAIRMAN. Well, I think we did order and will stick by the order allowing the transcript to be admitted, but I do think this witness is certainly in a better position now, having heard the tape and reviewed the transcript while listening to the tape, to confirm that it is a transcript of this tape than he was before. Perhaps you could question him on that.

Mr. BRYANT. You followed the transcript as the tape was played. Is it a transcript of the recording of the meeting between William Dredge, H. Paul Rico and William Borders, on September 12th?

Mr. MURPHY. Yes, sir.

The CHAIRMAN. Is there any objection to its introduction?

Mr. ANDERSON. I assume the prior objections we have submitted in writing are standing objections on these transcripts. Nothing further.

The CHAIRMAN. It will be admitted.

[The documents referred to were marked House Exhibit Nos. 38A and 38B and were received in evidence.]

Mr. BRYANT. Agent Murphy, again, who were the three persons speaking at the beginning of the tape?

Mr. MURPHY. The three main people on that tape were Mr. William Dredge, Mr. Paul Rico, and Mr. William Borders.

Mr. BRYANT. And how long did Mr. Dredge participate in the meeting?

Mr. MURPHY. For just the initial minute or so, while he made an introduction, and left the area.

Mr. BRYANT. All right.

Mr. MURPHY. Or they left the area.

Mr. BRYANT. There is a point on the tape where there is a pause, after Mr. Borders asks if Mr. Rico knows the number—those are the words used. Based on your participation in the surveillance of that meeting, do you know what happened during that pause?

Mr. MURPHY. Yes, sir, Mr. Borders apparently was writing on a piece of paper at that point in time.

Mr. BRYANT. And what did he do with the piece of paper after he wrote on it?

Mr. MURPHY. I don't recall if he put it in his pocket. I don't recall it, sir.

Mr. **Bryant**. Mr. Borders wrote something on a piece of paper, is that correct?

Mr. **Murphy**. That apparently he was showing to Mr. Rico——

Mr. **Bryant**. OK.

Mr. **Murphy**.—The undercover agent.

Mr. **Bryant**. At this time, Mr. Chairman, the House would offer into evidence Stipulations 58 and 60.

The **Chairman**. Is there objection to those two stipulations being admitted?

Ms. **Williams**. No objection.

The **Chairman**. They will be admitted.

[Stipulation Nos. 58 and 60 were received in evidence.]

Mr. **Bryant**. The House offers Stipulation No. 58, which is that on September 12, 1981, William Borders had no official connection with the *Romano* case, nor was he a member of the Florida bar.

Stipulation No. 60 is that on September 12, 1981, at approximately 11:00 a.m., as part of an FBI surveillance, William Borders was observed boarding Eastern Airlines flight 890, departing from Miami, Florida for West Palm Beach, Florida.

At this time, Mr. Chairman, we propose to uncover four designated items on our chart, which is our demonstrative evidence. First, the September 9th, 9:53 a.m. entry; second, all items on September 10th; third, all items on September 11th; and fourth, September 12th, at 1:30 a.m., 8:40 a.m., and 11:00 a.m.

Let me give you those again: September 9th, at 9:53; all items on——

Senator **Kerrey**. Mr. Chairman, could Ms. Williams just stand aside, so those of us could see that chart?

Mr. **Bryant** [continuing]. All items on September 11th; and September 12th, at 1:30 a.m., 8:40 a.m., and 11:00 a.m.

We would point out once again that smaller copies of these are in the information books in front of each Senator.

Agent Murphy, you testified earlier that the undercover plan called for the undercover person to ask Borders for some show of proof that the judge was involved in the bribery scheme, is that correct?

Mr. **Murphy**. Yes, sir, that's correct.

Mr. **Bryant**. And what was the plan for obtaining that show of proof?

Mr. **Murphy**. Well, at that point in time, based on the information that we had received from Mr. Dredge regarding Mr. Borders' assurance to him back earlier in the summer that he could have Judge Hastings show up at any restaurant at any time, any place, basically that is what we had in mind when we sent Mr. Rico to that meeting portraying Frank Romano. We were hoping to get some type of detailed meal ordered or something to that effect, and Mr. Rico advised later that he was not able to get that kind of finer detail into the dinner arrangement.

Mr. **Bryant**. And so did Mr. Rico put that part of plan into effect, that is, with regard to a restaurant on a given day, at a given time, at the September 12th meeting?

Mr. **Murphy**. Yes, sir, he did.

Mr. **Bryant**. All right. And the agreement was what?

Mr. MURPHY. Mr. Borders agreed to have Judge Hastings show up at the Fontainebleau Hilton Hotel in Miami Beach, Florida, on Wednesday, September 16th, at approximately 8:00 p.m.

Mr. BRYANT. All right. Now, did the FBI establish any surveillance of the Fontainebleau Hotel for September 16, 1981?

Mr. MURPHY. Yes, sir.

Mr. BRYANT. Were you present for that surveillance?

Mr. MURPHY. Yes, sir.

Mr. BRYANT. And did Judge Hastings appear?

Mr. MURPHY. Yes, sir, he did.

Mr. BRYANT. What time did he arrive and what did he do?

Mr. MURPHY. He arrived at approximately 7:45 p.m., with a young lady and they proceeded to the dining galleries, which is the main dining room of the Fontainebleau Hilton Hotel.

Mr. BRYANT. And how long did the surveillance of Judge Hastings continue?

Mr. MURPHY. For approximately two hours, until they finished dinner.

Mr. BRYANT. About what time did they leave the hotel?

Mr. MURPHY. Approximately 10:00 p.m.

Mr. BRYANT. Did the FBI subsequently obtain the records of Judge Hastings' reservations for dinner on the evening of September 16th?

Mr. MURPHY. Yes, sir.

Mr. BRYANT. At this time, Mr. Chairman, the House would offer Stipulations 86 and 89 into evidence.

The CHAIRMAN. Is there objection to those two stipulations being admitted?

Ms. WILLIAMS. No objection.

The CHAIRMAN. They will be admitted.

[Stipulations Nos. 86 and 89 were received in evidence.]

Mr. BRYANT. Mr. Chairman, the House offers Stipulation No. 86, which is that sometime prior to 7:45 p.m. on September 16, 1981, Judge Hastings made reservations for two for dinner at the Fontainebleau Hotel, main dining room, on September 16, 1981.

Stipulation No. 89 is that, on September 16, 1981, at the Fontainebleau Hotel, Judge Hastings did not have William Borders paged.

Now, Agent Murphy, during this September 12th meeting that we heard a few moments ago, Mr. Borders told Mr. Rico, who was impersonating Frank Romano, that he would be in Las Vegas the following week for the Championship Fight between Sugar Ray Leonard and Tommy Hearns. Is that correct?

Mr. MURPHY. That's correct.

Mr. BRYANT. And did the FBI confirm whether Mr. Borders went to Las Vegas for the September 16th fight?

Mr. MURPHY. Yes, sir, we did.

Mr. BRYANT. At this time, I will show you what has been marked as House Exhibits 39, 40, 41, and 42, and I will ask you if these are the airline coupons for Mr. Borders' flight to Las Vegas, on September 15, 1981, and Mr. Borders' flight returning to Washington National, on September 18th?

Mr. MURPHY. Yes, sir, they are.

Mr. BRYANT. At this time, we offer Exhibits 39, 40, 41, and 42 in evidence.

The CHAIRMAN. They will be admitted.

[The documents referred to were marked House Exhibit Nos. 39, 40, 41, and 42 and were received in evidence.]

Mr. BRYANT. Now, at the first meeting between Mr. Borders and Mr. Rico at the Miami Airport, did they set up another meeting?

Mr. MURPHY. Yes, sir, they did.

Mr. BRYANT. And for when and where was that meeting scheduled?

Mr. MURPHY. For the same location, the Miami International Airport, the following Saturday, at approximately 10:00 a.m.

Mr. BRYANT. In anticipation of that meeting, did the FBI set up any surveillance of Mr. Borders at the time of his return from Las Vegas——

Mr. MURPHY. Yes, sir.

Mr. BRYANT [continuing]. On September 18th, the night before the planned meeting on September 19th?

Mr. MURPHY. That's correct, we did.

Mr. BRYANT. All right.

At this time, Mr. Chairman, I would offer Stipulation No. 90 into evidence.

The CHAIRMAN. Is there objection to the admission of Stipulation No. 90?

Ms. WILLIAMS. No objection.

Mr. ANDERSON. We have the standing prior objections, but no objection to its admission.

The CHAIRMAN. It will be admitted.

[Stipulation No. 90 was received in evidence.]

Mr. BRYANT. Stipulation No. 90 is that, on September 18, 1981, William Borders and Madeline Petty flew from Las Vegas, Nevada, to Washington National Airport. Borders did not leave the Washington National Airport, and he departed at 9:20 p.m., for Miami, Florida, via Eastern Airlines flights 459 and 655.

Now, Agent Murphy, what was supposed to happen at the meeting between Mr. Borders and Mr. Rico on September 19th, the second meeting, one week after the first meeting?

Mr. MURPHY. The undercover agent was supposed to pay Mr. Borders $25,000 as front money or down-payment on the bribe.

Mr. BRYANT. And what preparations were made by the FBI in anticipation of that meeting?

Mr. MURPHY. Well, again, Mr. Rico was supplied with a body recorder and transmitter, $25,000 in $100 bills was received from a local bank, where the money was recorded, serial numbers were recorded, and basically then we proceeded to the airport.

Mr. BRYANT. All right. Was the meeting of September 19th, between Mr. Rico and Mr. Borders, tape recorded?

Mr. MURPHY. Yes, sir, it was.

Mr. BRYANT. I would like to show you what has previously been marked as House Exhibits 43A and 43B, and I will ask you if those are the tape recording and the transcript of the recording of the meeting between Mr. Rico and Mr. Borders, on September 19, 1981?

Mr. MURPHY. Again, the tape recording appears to be a copy of that conversation on September 19, 1981, and the transcript appears to be a copy of that transcript of that conversation.

Mr. BRYANT. The House would offer these exhibits into evidence and ask that Exhibit 43A be played.

Ms. WILLIAMS. There is no objection of the admission of the tape. There is a standing objection to the admission of the transcript prepared by someone else through this witness.

Mr. BRYANT. Mr. Chairman, again, it would save a great deal of time by quick reference to the rule issued on Monday, will reveal that these transcripts were ruled to be admissible for all purposes except a possible relevance objection at the time they were offered. There being no relevance objection, we would urge the committee to accept it.

The CHAIRMAN. They will be admitted.

[The documents referred to were marked House Exhibit Nos. 43A and 43B and were received in evidence.]

The CHAIRMAN. How long is this tape going to take, counsel, to play?

Mr. BRYANT. I don't know the answer, Mr. Chairman. It has been a while since I have listened to it.

The CHAIRMAN. OK. We are scheduled to recess at 5:30. Why don't we go ahead and listen and, if it is still running at that time, we may have to interrupt it.

Mr. BRYANT. I am informed that it is 8 to 10 minutes, so we can go ahead.

Mr. Chairman, we would like to point out that the transcripts can be found in the exhibit books behind Tab 43, and the course of the conversation can be followed.

[At this point a tape recording was played.]

United States Senate
EVIDENTIARY HEARINGS
HOUSE MANAGERS' EXHIBIT 43B

II.

September 19, 1981 9:47 a.m.

HPR: Hi. How'd ya like that fight?

WAB: Oh, it was nice. What's happening?

HPR: I thought Tommy Hearns coulda lasted.

WAB: Yea.

HPR: From the video, I don't know in person.

WAB: No, what happened was, a young fighter, didn't pace himself. It was very hot out, ah, humidity. I found out one thing - he's a better fighter than Ray.

HPR: Yea. He's a pretty good boxer, pretty good boxer.

WAB: Yea.

HPR: But the other fellow had, ah

WAB: Well, he learned from Duran's fight.

HPR: Yea, yea. But, ah, not bad fight, not a bad fight. Ah, you did what you'd said you'd do?

WAB: Um hum.

HPR: Ah, your man arrived and in fact, he arrived a little early and, ah, you said you could do that and that's, ah, your end of the situation. Ah, now, ah, I arrived a little early.

WAB: Um hum.

HPR: And I was a little leery of, ah, elevators.

WAB: Yea.

HPR: Ah, so that, ah, ah, you can have a choice, you can either come downstairs with me or I can come back, ah

WAB: What is it in?

HPR: Ah, it's in, it's just in an envelope. I'm gonna put it inside the, the newspaper and in, ah, give it to you. Do you want

WAB: How, how ah, where you want to do it?

EXHIBIT
43b
HOUSE

(2)

HPR: Well, I, I stuck it in a, in a locker downstairs so that I can pick it up and then, anyway why don't we, before we go any further, ah, ah, the last time we, we talked, my understanding was that the, ah, some property was going to be released.

WAB: Within ten days.

HPR: Within ten days of the last time we talked, right?

WAB: No, within ten days from today.

HPR: Oh, today?

WAB: Yea. We're not talkin about that many different days.

HPR: Oh.

WAB: (Laughs)

HPR: Yea, right, right, right. Okay, then, ah

WAB: Once you do that then file a motion for mitigation of sentence, but don't do that until that happens.

HPR: Right, right, right, right, right. In a, as a matter of fact, ah, the, ah, I'm not havin any, ah, discussions with my, ah, attorney over any of this, ah, bullshit except the, ah, except the, to tell him, ah

WAB: Just tell him you're tired of the appeal, just see if the man will reduce the sentence.

HPR: I see.

WAB: (UI) and that will take ya.

HPR: Okay.

WAB: UM hum.

HPR: Okay.

WAB: And don't talk about it to nobody about you.

HPR: Right, right, I, I, I, I, I realize that. I've got another, ah, got another, ah, you know, ah, reason why not to talk to anyone anyway because, ah...

WAB: Give you a (UI)

(3)

HPR: ...I've got a, I've got a lot of pressure on, ah, on, ah, need for people that, ah, aren't interested in, ah, in money and I'm not, ah,

WAB: Yea.

HPR: I've gotta put myself in a position where I, ah, come up against the tough times.

WAB: Okay.

HPR: You gonna come with me?

WAB: Well, you go. I'll meet you downstairs.

HPR: Okay, I'm gonna, I'm gonna go down. I'm gonna go downstairs and I gonna, ah, go, go up to the, ah, area and then walk back, I'll see you in the lobby then.

WAB: Okay.

HPR: Okay.

* *

HPR: I'm now going down the elevator.

* *

HPR: It's gonna happen right here.

DRS: Okay

* *

HPR: It's gonna happen right in the lobby, right there. Ahh.

* *

HPR: It looks like it's one minute till ten and I'm gonna remove the envelope from the locker.

WJM: Does he want you to bring it up to him?

HPR: No, he's gonna meet me downstairs in the the, ah, lobby downstairs.

WJM: Okay.

HPR: Now, I'm gonna take this right here and then I'm gonna put it inside, in the newspaper.

WJM: Right, okay. Give me like a minute and a half count, before you head back.

* *

(Note: HPR physically observed putting money on arm of sofa in hotel lobby.)

HPR: Hi, how are you? Good, good. Aah, not bad, not bad, I enjoyed that fight, that was some fight.

WAB: Yea, yea, it was excellent.

HPR: It really was. Um, ah, there's a, um, ah, there's 25, ah, right there and that's going to be, ah, my indication that, ah, everything is fine, ah, I feel that when the, when the next transaction takes place in ten day, I'll take another 25 and then the remaining hundred on the, ah, on the culmination.

WAB: That's different than what we had said.

HPR: What we had said is, ah, is I give you, ah, up front money for, ah, this thing here, you know, it

WAB: What?

HPR: That's my understanding, what is, what is, what do you want?

WAB: My understanding was, I thought you put up some big escrow.

HPR: Yea, that would be fa, that would be fine if I, if we had ah, one person that we, ah had mutual confidence in.

WAB: You don't have confidence in that fellow?

HPR: Well, I haven't had that, ah, kind of experience, you know, it's just that, ah, ah, I am, well, contacts are what makes confidence.

WAB: Right. I understand.

HPR: And, ah, I have more confidence in you today than I had the last time that I met you.

WAB: Um hum.

HPR: You gotta believe that, ah, you know, you bring confidence when you wanta

WAB: You should have.

HPR: (UI)

WAB: I understood that.

HPR: So that it, ah, there's there's no way, ah, as a matter of fact, ah, it, ah, if you want to, ah, you know my brother's had, ah, history of heart problems, ah, you can have one of us, ah, he could, ah, he can come up ill at the last moment and, and they can have my sentence mitigated and then, ah, payments are made and then we can do the other.

WAB: (UI) that's two. No No No, that's to, That just to compensate 'cause the other guys gotta be having twenty.

HPR: Yea, right.

WAB: Ah, well, okay, do it this way. The problem is I don't want to keep coming back and forth, down.

HPR: Oh, I can understand that, you know.

WAB: Secondly.

HPR: You want me to go someplace else, you know?

WAB: No, no.

HPR: But this is very important to me.

WAB: I know, well, I can understand your position at this point.

HPR: Alright.

WAB: What about as soon as the other is done. Get it all up as soon as he does it.

HPR: Alright, alright, alright I think that, that, ah, um, alright that's, okay, so the, ah, the balance, okay, now, ah, do you have any idea on the, on the timing so that you figure out, ah, when you want this thing to happen, ah, because, ah, and how do you, and how do you want this, that's all in hundreds.

WAB: That's fine.

HPR: Okay.

WAB: What's the date?

HPR: The 19th.

(UI--background noise)

(6)

WAB: What about October the third?

HPR: October the third, okay, what day of the week is that?

WAB: It's a Saturday.

HPR: Saturday, alright, fine, October the third, and by that time there would have been the . . .

WAB: Um hum.

HPR: . . . the transaction, but, ah, but, ah, okay, like I said, ah, this will be done strictly on, in same place?

WAB: Do you want to change it?

HPR: I don't care, I, I don't care.

WAB: Okay, ah, same place.

HPR: It's less confusing, I think

WAB: Yea.

HPR: Yea Okay, ah, same time then?

WAB: Fine, fine.

HPR: Okay, now, um, I will know by then if this thing has happened?

WAB: Sure. Right

HPR: Okay, and as I said, ah, my, ah, I don't have to ask my attorney to do anything on this?

WAB: No.

HPR: This is done, this is strictly

WAB: Just strictly (UI)

HPR: Okay, okay. October the third so that'll be done by then?

WAB: Um hum.

HPR: Good. Do you think there'll be a rematch with, ah, Hearns?

WAB: Oh sure, sure, too much money involved.

HPR: Yea, yea, they actually put on a good show, I was, ah, I thought, ah, Hearns looked like the boxer and the other guy looked like the, the slugger and (UI) gets it in the end. But Sugar Ray's eye was almost completely closed.

WAB: Did a job on it.

HPR: Umm.

WAB: Did a job on it. Did I give you one of my cards last time?

HPR: No.

WAB: I thought I had some one me. Wait for me, I'm going upstairs, I gotta get my bag and stuff, I'll be right back.

(Note: WAB physically observed picking up newspaper and putting it inside jacket.)

HPR: Sure, fine, fine, alright.

WAB: Write your telephone number down for me.

HPR: Okay.

WAB: Did I give your pen back?

HPR: No, you still got my pen.

WAB: (Laughs) okay.

HPR: Okay. He's going upstairs in the, ah, elevator.

JS: The job get done?

HPR: He's coming back here.

JS: Okay, I'll stay on the phone.

* * * * * * * * * * * * * * * * *

HPR: 10:10

* * * * * * * * * * * * * * * * *

HPR: Alright?

WAB: Yea. Did you write that down?

HPR: Right here.

WAB: Okay, alright.

HPR: Okay, Bill, October third.

WAB: Okay, good enough.

HPR: Right.

* * * * * * * * * * * * * * * * *

HPR: Want me go to the car?

AA: Huh?

HPR: Want me go to the car?

AA: Yea.

* * * * * * * * * * * * * * * * *

HPR: Okay, ah, it's ah, 10:18, and I'm going off the air in my car.

Mr. **Bryant**. Mr. Chairman, I urge the technician to turn it off, because the remainder of it is not relevant. It is in your transcript already, and you are on the edge of your adjournment time.

With the Chair's permission, I would at this time, as our final offering today, offer Stipulation 288 into evidence.

The **Chairman**. Is there objection to Stipulation 288?

Ms. **Williams**. No, no objection.

The **Chairman**. It will be admitted.

[Stipulation No. 288 was received in evidence.]

Mr. **Bryant**. Mr. Chairman, Stipulation No. 288 offered at this time by the House is that, on September 20 or 21, 1981, William Borders and Judge Hastings spoke on the telephone.

The **Chairman**. At this point, Representative Bryant, we will go ahead and recess, as we had previously scheduled, and reconvene at 9:00 tomorrow morning.

[Whereupon, at 5:32 p.m., the committee recessed, to reconvene on Thursday, July 13, 1988, at 9:00 a.m.]

IMPEACHMENT OF JUDGE ALCEE L. HASTINGS

THURSDAY, JULY 13, 1989

U.S. Senate,
Impeachment Trial Committee,
Washington, DC.

The committee met, in closed session, pursuant to notice, at 9:10 a.m., in room SH-216, Hart Senate Office Building, Hon. Jeff Bingaman, chairman of the committee, presiding.

Present: Senators Bingaman, Specter, Leahy, Durenberger, Pryor, Rudman, Bryan, Bond, Kerrey, Lieberman, and Burns.

House Managers Present: Representatives Bryant, Synar, Fish, and Gekas.

Counsel Present: Terence Anderson, counsel for Judge Hastings; Patricia Graham Williams, counsel for Judge Hastings; Robert S. Catz, counsel for Judge Hastings; Lewis Myers, Jr., counsel for Judge Hastings; Alan I. Baron, special counsel, House Impeachment Committee; Janice E. Cooper, Patricia Wynn, and Lori E. Fields, assistant special counsel, House Impeachment Committee; Michael Davidson, Senate Legal Counsel; Elaine Stone, counsel, Senate Impeachment Trial Committee; Mark Klugheit, counsel, Senate Impeachment Trial Committee; Bruce McBarnett, counsel, Senate Impeachment Trial Committee.

Staff Present: Anthony Harvey, administrator, Senate Impeachment Trial Committee; P. Casey McGannon, staff assistant, Senate Impeachment Trial Committee; and Isabel McVeigh, staff assistant, Senate Impeachment Trial Committee.

The **Chairman.** We are now ready to reconvene and proceed with additional testimony.

Are there any matters that counsel needed to call to the attention of the committee before we continue with testimony?

Mr. **Bryant.** Mr. Chairman, the committee counsel informed us that this might be a propitious moment to bring up a matter of some controversy with regard to some evidence sought by the respondent.

RESPONDENT'S REQUEST FOR PRODUCTION OF THE PRIOR TESTIMONY OF JIMMY HARMON

Mr. **Anderson.** Specifically, Mr. Chairman, the Investigating Committee of the Judicial Conference of the Eleventh Circuit took some testimony from Jimmy Harmon and placed it under seal. Mr. Harmon was the—I do not know what the Government calls him, but the agent of the Bureau of Alcohol, Tobacco and Firearms to whom Mr. Dredge supplied information. Mr. Harmon testified, I believe under seal, regarding the information that Mr. Dredge had provided him, and that sealed testimony was transmitted to the House.

Mr. Harmon is on our witness list. Mr. Dredge's credibility and his character have become significant issues here in assessing the case. I have gathered from speaking with counsel for the House that they have not yet unsealed it. I think that is prior testimony by a witness who will be called, and I would ask that it be supplied to us so we may prepare for the proper cross-examination and examination of Mr. Harmon.

The **Chairman**. We would advise counsel that our intent is to have that information reviewed by committee counsel and determine whether we, in fact, believe that it would be helpful to the defense; and if so, of course, we will provide it.

Mr. **Anderson**. I wonder if counsel for the defense might at least participate in the *in camera* review so that I can make known to committee counsel—sometimes I can see things in documents as counsel for respondent that might not be immediately apparent, prior to Mr. Harmon's testimony, to committee counsel in reviewing.

The **Chairman**. Let us take that under advisement as to the exact procedures used for that *in camera* review, and we will advise you later in the morning on that.

Mr. **Anderson**. Thank you, Mr. Chairman.

The **Chairman**. If House counsel could go ahead and proceed with the direct examination.

Mr. **Bryant**. Mr. Chairman, the last thing I did yesterday in conducting this direct examination was to read Stipulation 288 into the record, and I would like to read that again now for the committee.

Stipulation 288 is that on September 20 or 21, 1981, William Borders and Judge Hastings spoke on the telephone.

TESTIMONY OF WILLIAM MURPHY (continued)

DIRECT EXAMINATION (continued)

Mr. **Bryant**. Now, Agent Murphy, when we closed yesterday, we had just heard the tape recording of the September 19th meeting between William Borders and H. Paul Rico, the man that Borders thought was Frank Romano. Is that correct?

Mr. **Murphy**. Yes, sir. That is correct.

Mr. **Bryant**. And at that meeting, $25,000 was paid to Mr. Borders—by Mr. Borders; is that correct?

Mr. **Murphy**. The undercover agent paid Mr. Borders $25,000, yes, sir.

Mr. **Bryant**. I am sorry. Yes, you stated it correctly. The question again was: At that meeting, $25,000 was paid to Mr. Borders by the undercover agent; is that correct?

Mr. **Murphy**. Yes, sir.

Mr. **Bryant**. Now, in both that meeting and the earlier meeting between the two of them at the Miami International Airport, was there discussion of the return of some property?

Mr. **Murphy**. Yes, sir. That did take place.

Mr. **Bryant**. Now, is that something that the FBI had asked Mr. Rico to bring up?

Mr. MURPHY. No, sir. Mr. Rico was instructed to go to the first meeting with Mr. Borders and seek strictly the reduction of the three-year jail sentence that the Romano brothers had been sentenced to.

Mr. BRYANT. Well, who raised, then, in the meeting the issue of the return of forfeited property by the court, by Judge Hastings, to the Romanos?

Mr. MURPHY. Mr. Borders offered that to the undercover agent as a show of proof that he was in this bribery matter with Judge Hastings because it would have been something that only the trial judge would have been able to accomplish.

Mr. BRYANT. Well, then, was the bribe being paid in order to have the property returned?

Mr. MURPHY. No, sir.

Mr. BRYANT. It was being paid instead for what?

Mr. MURPHY. For a reduction in the three-year jail sentences that both the Romano brothers had received.

Mr. BRYANT. And as your understanding as the FBI agent, the case agent at the time, was that the purpose of the order of returning the property was what?

Mr. MURPHY. It was our belief then and now that the offer to return the property was a show of proof on Mr. Borders' part.

Mr. BRYANT. Now, I believe you testified a few minutes ago that at the second meeting, the one on September 19th, Mr. Rico gave Borders some money; is that not correct?

Mr. MURPHY. Yes, sir.

Mr. BRYANT. OK. At this time, we would like to uncover designated items on the chart that accompanies the presentation of this direct evidence.

The first item is the item designated prior to September 16th. The second item is the item designated September 16th at 7:45 p.m. The third item is September 18th at 9:20 p.m. The next item is September 19th at 10:00 a.m. The next item is September 20th or 21st, the stipulation.

Agent Murphy, at the September 19th meeting, was Mr. Borders observed giving anything to Mr. Rico?

Mr. MURPHY. He gave Mr. Rico his business telephone number.

Mr. BRYANT. All right. And was the phone number that he gave to him used for another step in your investigation?

Mr. MURPHY. Yes, sir. It was part of the probable cause that we used to file an affidavit to seek Title III electronic surveillance coverage of his business telephone.

Mr. BRYANT. And was a wiretap authorized?

Mr. MURPHY. Yes, sir. On Thursday evening, October 1st, a U.S. District Court judge in Washington, DC signed the order.

Mr. BRYANT. And for whose phones was the order authorized?

Mr. MURPHY. Mr. Borders' law office.

Mr. BRYANT. And when did that tap on his office phone begin?

Mr. MURPHY. My recollection is it was authorized and begun Thursday evening, October 1st.

Mr. BRYANT. Now, was a wiretap also authorized for his home phone?

Mr. MURPHY. Subsequently, subsequent to a conversation on Friday, October 2nd, about mid-afternoon, Mr. Borders supplied the undercover agent with his home telephone number, and later in the evening on October 2nd, authorization was applied for to the same district court judge and received to conduct electronic surveillance of Mr. Borders' home telephone number.

Mr. **Bryant**. The surveillance was commenced; is that correct?

Mr. **Murphy**. Yes, sir. On Friday evening.

Mr. **Bryant**. All right. Now, at the September 19th meeting, the second meeting between Mr. Borders and Mr. Rico, plans were made for a third meeting between the two of them; is that not correct?

Mr. **Murphy**. Yes, sir.

Mr. **Bryant**. And when was that meeting to occur?

Mr. **Murphy**. Based on the conversation between the undercover agent and Mr. Borders, it was scheduled to occur on Saturday, October 3rd.

Mr. **Bryant**. And what was the purpose of that meeting?

Mr. **Murphy**. That the order to return the property should have been issued at that point in time, and that we were supposed to pay the remaining amount of the $150,000.

Mr. **Bryant**. All right. Was an order issued, in fact, to return some of the forfeited property to the Romanos within 10 days of the September 19th meeting?

Mr. **Murphy**. No, sir.

Mr. **Bryant**. And what steps did the FBI take in view of the fact that the promised order had not been issued within the promised period of time?

Mr. **Murphy**. We instructed the undercover agent to telephonically contact Mr. Borders on Friday, October 2nd, at his law office in an attempt to see what would happen when we had the undercover agent call him and find out where the order was.

Mr. **Bryant**. And the first call was then made at what time?

Mr. **Murphy**. We actually made two or three phone calls earlier in the day, one at approximately, I believe, 10:20, one about 12:30; one about 2:30 or 2:40; and then we were finally—the undercover agent was put in contact and patched through from Mr. Borders' law office to a client of Mr. Borders where Mr. Borders was, and they had a conversation.

Mr. **Bryant**. And they spoke only on the fourth call; is that correct?

Mr. **Murphy**. That is my recollection. Yes, sir.

Mr. **Bryant**. Let me show you what have been previously marked as House Exhibits 50A and 50B. Is House Exhibit 50A the recording of the conversation generated by Rico's calls to Mr. Borders on October 2, 1981?

Mr. **Murphy**. It appears to be, sir.

Mr. **Bryant**. Mr. Chairman, we would offer House Exhibit A into evidence.

Ms. **Williams**. No objections.

Mr. **Bryant**. And House Exhibit B into evidence based upon your order of Monday of this week.

The **Chairman**. House Exhibit A will be admitted. House Exhibit B, which counsel for respondent has objected to is all of these transcripts, as I understand it.

Ms. **Williams**. Yes.

The **Chairman**. Those had been admitted, but I should advise counsel we are admitting those contingent upon the House demonstrating the fact that those were prepared through the person who did the preparation at some time in your case.

[The document referred to was marked House Exhibit No. 50B and was received in evidence with condition.]

The **Chairman**. As I understand, the FBI did not prepare these transcripts; is that correct?

Mr. **Bryant**. That is correct, Mr. Chairman, I believe. But it was my understanding that the order of Monday of this week indicated these were admitted for all purposes except relevance, and that the respondent counsel could object at the time of their introduction that they were not relevant.

The **Chairman**. Regardless of what our Order No. 8 said, there are some items interjected in these transcripts that are not part of the recording. In reviewing these yesterday as they were being played, it became clear to me that you have, to a degree, edited these transcripts. We need to have that clarified by Mr. Shuy before we are in a position to present this to the full Senate as part of the record.

Mr. **Bryant**. At this time, Mr. Chairman, we would offer into evidence House Exhibit 50A, the tape recording of this telephone conversation that I just mentioned a moment ago. I would offer it to the committee to be played.

The **Chairman**. It will be admitted, and it can be played at this time.

[The tape recording referred to was marked House Exhibit 50A and was played at this point.]

III.

October 2, 1981 3:10 p.m.

(Rico converses with female at William Borders' law office).

United States Senate
EVIDENTIARY HEARINGS
HOUSE MANAGERS' EXHIBIT 50B

WAB: Hello.

HPR: Hello, Bill.

WAB: Yeah.

HPR: It's Frank.

WAB: Yeah.

HPR: What's happened? Ya know, the ah, the ah, the, nothing has happened here.

WAB: I think it has. Your man should've told you. I'll check into it.

HPR: I, I, ah, talked to my man and, and, ah, asked him what was new and he said nothing, ya know, really. So I don't know, ah, when this suppose, supposed to have happened Wednesday.

WAB: Yea. Okay.

HPR: Yet nothing has happened.

WAB: Okay. Let me do this. Let's cancel tomorrow. Okay.

HPR: Alright.

WAB: And let me get back on that.

HPR: Can, could you give me any idea, ah, what, uh, what the hell is, ah, gone wrong?

WAB: It's supposed to, ah, been done. That's why I, I don't, you understand what I'm saying?

HPR: Yea.

WAB: And, I, I can't, the only thing I can say is, a lack of communication in terms of through the mail. You follow me?

HPR: I see.

WAB: Yea. Uh. . .

HPR: We can always blame those people. They screw up everything.

EXHIBIT
50b
HOUSE

(Both laugh)

WAB: (Laugh) How 'bout that, buddy.

HPR: Yea. Could you, ah, alright, ah. . .

WAB: Ah...

HPR: What do you want me call ma and let me know because I've got, ah, you know, I've got, ah. . .

WAB: I understand.

HPR: . . . some problems involved in this.

WAB: Huh?

HPR: And my brother, you know.

WAB: I understand.

HPR: Yea.

WAB: Look, give me a number where I can reach you later.

HPR: Ah, you got that number, 922-3319.

WAB: 3319.

HPR: Yea.

WAB: Call you tomorrow night.

HPR: Tomorrow night?

WAB: Yea.

HPR: You can, you can't call me tonight?

WAB: I may or may not, because I don't know if I can find out, be, because of the time. You understand what I'm saying?

HPR: I see.

WAB: Yea, and I'm just so, to make sure.

HPR: Well, I, ah, alright. I got something lined up, ah, tomorrow night, but, ah. . . how 'bout if I called you first thing Monday morning?

WAB: Good enough.

HPR: Oh, what time's a good time to catch you in the office?

WAB: Uh, why. . .

HPR: Ya wanna give me another number. Whatever you want to do.

WAB: Okay. Tell you what. Let me give you my home number.

HPR: Your home phone number?

WAB: Yea. 398

HPR: 398.

WAB: Yea. 6321.

HPR: 6321.

WAB: Yea.

HPR: Okay.

WAB: Call me Sunday.

HPR: 698. . .

WAB: No. . .

HPR: Ah 39 . . . 398. . .

WAB: Yea.

HPR: . . . 6321.

WAB: Yea.

HPR: And it's the same area code.

WAB: Yea.

HPR: And I'll call you Sunday morning.

WAB: Make it about 9:30.

HPR: 9:30.

WAB: Yea.

HPR: Okay.

WAB: Alright, buddy.

HPR: Okay, bye.

WAB: Bye.

Mr. **Bryant**. Now, Agent Murphy, what time did the call which we just heard take place?

Mr. **Murphy**. The call was initiated approximately 3:10 p.m, and it took several minutes before the undercover agent was patched through to Mr. Borders. So I would say it probably stated occurring 3:15 to 3:20.

Mr. **Bryant**. And did the FBI monitor a call later that same day from Mr. Borders' office to the chambers of Judge Hastings?

Mr. **Murphy**. Yes, sir.

Mr. **Bryant**. What time was the call to Judge Hastings' chambers placed?

Mr. **Murphy**. Approximately 4:50 p.m.

Mr. **Bryant**. And what was the result of that call?

Mr. **Murphy**. The individual at Judge Hastings' chamber who answered the phone advised that he had left 20 minutes earlier.

Mr. **Bryant**. At this time, Mr. Chairman, I would offer into evidence Stipulations 101, 103, and 107.

Ms. **Williams**. No objection.

The **Chairman**. Those stipulations will be admitted.

[Stipulation Nos. 101, 103, and 107 were received in evidence.]

Mr. **Bryant**. Those stipulations are: No. 101, that on October 2, 1981, H. Paul Rico made four calls to William Borders' law offices, all of which were recorded pursuant to Federal wiretap authorization.

No. 103 is that on October 2, 1981, at approximately 3:00 p.m., Williams Borders was out of his law office, but he arranged to have Frank's (H. Paul Rico's) call put through to him at another office.

And Stipulation No. 107 is that on October 2, 1981, at 4:50 p.m., William Borders' secretary called Judge Hastings' chambers and was told that the judge had left for the day. The call was recorded pursuant to a Federal wiretap authorization.

Now, Agent Murphy, during the conversation on Friday, October 2nd, Mr. Borders and Mr. Rico agreed that Mr. Rico would call again on Sunday, October the 4th; is that correct?

Mr. **Murphy**. Yes, sir.

Mr. **Bryant**. And did, in fact, Mr. Rico call Mr. Borders on that Sunday?

Mr. **Murphy**. Yes, sir, he did.

Mr. **Bryant**. I will show you at this time what have been previously marked as House Exhibits 52A and B and ask you whether they are the tape recording and the transcript of the recording of the conversation.

Mr. **Murphy**. They appear to be, yes, sir.

Mr. **Bryant**. At this time, I would offer into evidence House Exhibit 52A.

The **Chairman**. Is there objection?

Ms. **Williams**. There is none.

The **Chairman**. It will be admitted.

[The document referred to was marked House Exhibit No. 52A and was received in evidence.]

Mr. **Bryant**. At this time, I would ask that the tape recording of this conversation be played for the committee.

The **Chairman**. If the recorder would please play that for the committee.

[A tape recording was played at this point.]

IV.

October 4, 1981 9:38 a.m.

WAB: Hello.

HPR: Hello, Bill. Frank.

WAB: Hey, buddy. How ya don'? Mom, I have the phone. . . How ya doin'?

HPR: Not bad.

WAB: Okay. Look, I don't have an answer for you. Can you call me at 4:30 at the office tomorrow evening?

HPR: Alright. Alright. I can call you. At 4:30 tomorrow evening?

WAB: Yea. Okay.

HPR: You have no idea of, ah. . .

WAB: I have not, ah, gotten an answer, cause I haven't been able to talk to anybody.

HPR: I see.

WAB: Yea.

HPR: Okay. Then.

WAB: Alright.

HPR: If I call you at, ah, if I call you at 4:30 at your office. . .

WAB: Yea. Okay.

HPR: Okay.

WAB: Right, buddy.

HPR: Okay. Bye.

WAB: Bye.

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HOUSE MANAGERS' EXHIBIT 52B

EXHIBIT
52b
HOUSE

Mr. **Bryant**. At this time, Mr. Chairman, I would offer into evidence Stipulation 109.

The **Chairman**. Is there objection to the introduction of Stipulation 109?

Ms. **Williams**. No objection.

The **Chairman**. It will be admitted.

[Stipulation No. 109 was received in evidence.]

Mr. **Bryant**. Stipulation 109 is that on the afternoon of October 4, 1981, William Borders called Judge Hastings' home.

Now, Agent Murphy, when did Mr. Rico next speak with Mr. Borders?

Mr. **Murphy**. Approximately 4:30 on Monday, October 5, 1981.

Mr. **Bryant**. Mr. Chairman, at this time, the House is taken by surprise by the chairman's comments with regard to the transcripts inasmuch as the order which we have been proceeding upon explicitly allows them to be offered into evidence subject only to a relevance objection. I think it would be valuable if at this point we resolve that matter. If, indeed, the order is not in effect and what you want us to do is submit other transcripts, then we would move for a recess until we have the opportunity to rewrite the transcripts, to change them to your satisfaction and submit them again.

The **Chairman**. Counsel, the transcripts that you offered yesterday are not just transcripts. They have interdacted in there editorial comments about what has happened in between. I am sure that that is information which you intend to prove, but it is not an accurate transcript of what we are hearing. That has been the concern I have.

I cannot say that about the ones this morning.

Mr. **Bryant**. Mr. Chairman, first of all, they are the transcripts which this committee gave us an order on Monday, and that is why we are here today with them. Now, if they are not satisfactory, then we would ask that these proceedings be recessed until we can re-discuss this matter.

The **Chairman**. Do you have a witness who prepared those transcripts who you are intending to call?

Mr. **Bryant**. I am sure we could bring one. We had not intended to bring one.

The **Chairman**. You had not planned to call——

Mr. **Bryant**. We assumed that it was——

The **Chairman** [continuing]. Mr. Shuy as a witness?

Mr. **Bryant**. The problems that you are raising are not ones that Mr. Shuy has any connection with. Mr. Shuy is a linguist who used high-fidelity, very complex equipment to listen closely to the tape recordings and try to glean from them every comment. You are, I think, raising questions about the fact that during lengthy pauses in the activity being recorded, editorial comment was added to tell what was going on during the time nothing could be heard. And, of course, that was done by the FBI. Agent Murphy can testify in most cases as to what was going on during the blank spaces in the transcript where we had added editorial comment pointing out what was going on.

The **Chairman**. At this point, I do not think it is a major impediment to the presentation of the House case for you to introduce the tape recordings, and those have been introduced. We would like a chance to review these transcripts before they are sent on to the Senate. If you wish to present them at this point, we will take them on the condition that we are satisfied that they are accurate transcripts and that you have properly indicated the evidentiary basis for the items that are in there that are not part of the transcript.

Mr. **Bryant**. The transcripts are a hundred percent perfect, loyal representation of what is listened to on the tape. We offer them to you in this proceeding so that you can read them as you listen and for no other purpose.

I think you will find that the ones that are offered——

The **Chairman**. Would House counsel agree to strike out the material that is in these transcripts that is not, in fact, on the tape?

Senator **Rudman**. Mr. Chairman?

The **Chairman**. Senator Rudman.

Senator **Rudman**. May I pose a question to the chair?

The **Chairman**. Certainly. Go ahead.

Senator **Rudman**. Since the purpose of our hearing is to gather this evidence and to pass it on to the full Senate, I find the chairman's statements very accurate and precise as to the transcripts themselves. But I must say that for the Senate looking at the transcripts, it would be helpful for them, when there are long pauses, to have an idea of why those pauses took place. Thus, could the House re-prepare those transcripts rather than striking them by simply highlighting them in brackets with an asterisk indicating they are not part of the transcript, but they are descriptive as to what was going on during the period as supported by evidence. If it is not supported by evidence, then defendant can move to strike. Because if you do not have it in that form, then if you are sitting in the Senate two months from now reading that transcript—and I would suggest the chairman look at several of yesterday's—they really do not flow.

So I would suggest—and this is normal practice—that if they are not part of the actual transcription as to what was said, it be clearly marked and highlighted and bracketed and asterisked that it is not part of the transcript, but description supplied by evidence at the hearing. To me, Mr. Chairman, that would be much better for our colleagues who, after all, are probably going to look at these transcripts as closely as anything else they are going to look at in our entire report.

The **Chairman**. Mr. Anderson?

Mr. **Anderson**. Mr. Chairman, I think both Senator Rudman and you have captured a part of our concern about the transcripts. They do flow too well. There are gaps and things that are not there. Quite apart from the editorial comments, there are things that are underscored, which in a typical lawyer's fashion say that they are for emphasis. I do not believe the underscoring in those transcripts is intended for emphasis, but these were not matters that the preparer has been examined about. The tapes themselves have long gaps which, in the interest of time, are not being played for the committee.

I had a thought, and I had thought that this was going to happen. One way, in part, that my concerns would be ameliorated is if in the official transcript we had a transcription of what the court reporter has heard here, so at least Senators would know whether there were ambiguities when they read in their exhibit volumes something else.

You will recall—and I think we are moving away—that the ruling said the tapes themselves are the best evidence. Pragmatically, I have to acknowledge that I do not think too many of your colleagues are going to clamp on the earphones and sit through this kind of thing. To the extent that we do not want—I do not want to elevate these transcripts above the tape as evidence. If we are substituting transcripts, I would rather have it be what the official reporters here and what you have heard in this room so that your transcript flows. I got this morning's transcript and found only, "Here a tape was played," which is going to at least force a Senator to turn to a different book to hear what was played.

In addition to whatever you do with these transcripts—and I think the Chair's position is correct—I think it might partially ameliorate Senator Rudman's concern, and it would sure ameliorate a lot of the respondent's concerns, if the official reporters of this hearing, as they do with Agent Murphy's testimony and every other witness's testimony, simply take down what they hear as those tapes are played and put it right there in the transcript so the Senators can read the story as you heard it. That would be my suggestion, in addition to the House transcript.

The **Chairman**. Mr. Anderson, we do not want to make our reporter an expert witness for purposes of this hearing. So we do not wish to proceed as you suggested. But at the same time, let me say to counsel for the House, my concern is that there are notes interjected in these transcripts that are not supported by evidence that has been testified to as yet. At least I am not clear that it has.

For example, yesterday at Page 4 of one of these transcripts——

Mr. **Bryant**. Which one, Mr. Chairman?

The **Chairman**. The September 19, 1981, phone call at 9:47 a.m. There is a note that says, "HPR physically observed putting money on arm of sofa in hotel lobby." I do not recall testimony establishing that.

Now, if you wish to establish that, that is certainly your privilege. But I do not think that fact should become part of the official record we present to the Senate because someone has interspersed it in a transcript that we have allowed to come in.

Mr. **Bryant**. Well, Mr. Chairman, I understand your concern exactly. Of course, it would be very easy for me at this very moment to get testimony from Agent Murphy that that was the case. These——

The **Chairman**. Well, I am not saying that is the only one. I am saying that that is the practice that has been followed in the preparation of these transcripts, the interspersing of that type of information. I think there is some legitimate concern also about the underlining of different items in it.

Mr. **Bryant**. Mr. Chairman, the underlining is a result of the fact that we wanted to make it very clear that when the Congress hired Roger Shuy to use his sophisticated equipment to listen to these tapes, he found additional information on those tapes, and so he underlined his information to show that it was different than what the FBI with less sophisticated equipment had heard previously. That is the reason for the underlining, not for emphasis. He can testify to that.

The CHAIRMAN. Counsel, I think you can present your case in a very orderly fashion with the use of the tapes, and I would just request that you take the transcripts and conform them with the actual tape recordings. And at that point, we would be glad to include them in the record we submit to the Senate.

Mr. BRYANT. Well, inasmuch as Exhibits 50B and 52B have no statements with regard to what is going on during a gap and no underlinings, we offer them into evidence at this time.

The CHAIRMAN. Is there objection as to those two exhibits?

Mr. ANDERSON. Mr. Chairman, our standing objection on transcripts is before the committee, but I would like to be heard just briefly on this question. These court reporters, I do not intend to call them as witnesses, but they are the experts upon whom the Senate will rely for recording accurately what Agent Murphy says. Why are they not also appropriate experts for recording what this committee heard via a tape recording?

Now, the quality of these transcripts—Roger Shuy with his sophisticated equipment may have heard things beyond the capacity of the normal ear. I do not know that. But were the full Senate sitting, they would hear what you are hearing. You are using and relying on and submitting to the Senate what these fine court reporters take down as expert representations. That is what went on in this room. I would like what went on in this room also.

The CHAIRMAN. Counsel, I do not want to cut you short, but we do need to proceed with the case. And this was not the main issue that I was trying to resolve at this point. We have already ruled on this once.

Mr. ANDERSON. You have never ruled on this point before, sir.

The CHAIRMAN. Well, I have now. We will not use our own transcription as the accurate transcript. We will permit the House to present accurate transcripts, and we will use that.

Mr. ANDERSON. Our exception——

The CHAIRMAN. If you have objections to any item in the transcripts submitted by the House, we will be glad to consider those and uphold those objections where they are valid.

Counsel, could you proceed with the remainder of your direct examination?

Mr. BRYANT. Yes, Mr. Chairman. Did we rule on these two exhibits?

The CHAIRMAN. They will be admitted.

[The documents referred to were marked House Exhibit Nos. 50B and 52B and were received in evidence.]

Mr. BRYANT. Stipulation 109 was that on October 4, 1981, William Borders called Judge Hastings at home.

Now, Agent Murphy, when did Mr. Rico next speak with Mr. Borders—the undercover agent?

Mr. MURPHY. The undercover agent did speak to Mr. Borders on Monday, October 5th, at approximately 4:20 to 4:30 p.m.

Mr. BRYANT. All right. I will show you House Exhibits 53A and B and ask you if they are the tape recording and the transcript of that conversation.

Ms. WILLIAMS. Mr. Chairman? Where did Mr. Chairman go?

Mr. Murphy. Yes, sir. They appear to be.

The Vice Chairman [presiding]. The vice chairman is now presiding. The chairman has a pressing matter in another committee.

Ms. Williams. Mr. Vice Chairman, I just wanted to bring to your attention that just now, when Mr. Bryant read Stipulation 109, he said, "William Borders called Judge Hastings at home." That is not the way 109 read. It reads, "William Borders called Judge Hastings' home." And it makes a big difference, so I would just like to correct that.

Mr. Bryant. At this time, we offer into evidence House Exhibits 53B and 53A.

Ms. Williams. No objection.

The Vice Chairman. Admitted.

[The documents referred to were marked House Exhibit Nos. 53A and 53B and were received in evidence.]

Mr. Bryant. Mr. Chairman, we would point to the fact that each committee member has a transcript of this recording, as all recordings, in their material before them.

[A tape recording was played at this point.]

D. 12

The following is a conversation which occurred on October 5, 1981, at 4:22 p.m. between H. Paul Rico (posing as Frank Romano) and William Borders on telephone line 387-1101:

Unknown Female:	Office.
Frank:	Yeah. William Borders please.
Unknown Female:	He's not in yet. Is there a message?
Frank:	Uh, this is Frank. I was suppose to call him, but uh this time and do you expect him in?
Unknown Female:	Yeah. Any minute.
Frank:	Okay. Uhm...
Unknown Female:	Wait a min wait a minute. Someone is coming in the back door now. Hold on a second.
Frank:	Okay.
Unknown Female:	Bill.
Bill:	Yeah.
Unknown Female:	Pick up on uh 1100. Long distance. Hold on a second. He's coming in the door.
Frank:	Okay.
(placed on hold)	
Bill:	Hello.
Frank:	Yes.
Bill:	Hey.

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HOUSE

58-1899-SubJ-16

Frank: Frank.

Bill: You timed that at two minutes early. Didn't ya?

Frank: Ah, I guess so.

Bill: (laugh) I was just walking in the door.

Frank: Well, you gotta believe I'm quite anxious.

Bill: Yeah. Okay. I understand. Look, I checked on that matter...

Frank: Yeah.

Bill: ...and it was in the mails. It was it hadn't gone out yet.

Frank: Oh, Jesus.

Bill: No. Well...

Frank: Yeah.

Bill: ...it did but, that's been taken care of. Okay.

Frank: Well, it would of went out uh then then it went out this uh the today then probably. Uh?

Bill: It was probably today or first thing in the morning. I'm just I had I I wanna give it a little time. You understand what I'm saying.

Frank: Yeah.

Bill: Yeah.

Frank: Right.

Bill: Okay.

Frank: Anyway I could uh pick up a copy of that at uh the office or something?

Bill: Ah...

Frank: I mean could I send someone over and just...

Bill: Naw naw. Naw don't do that. Don't do that.

Frank: Don't do that. Uh.

Bill: Yeah. You understand what I'm saying.

Frank: Yeah. Alright. Okay.

Bill: Yeah. Yeah.

Frank: Then uh I just have to uh...

Bill: Your friend should tell you something. Where you went you say you went before.

Frank: Yeah. Right.

Bill: Yeah. He should be calling you a couple days.

Frank: Okay.

Bill: Okay.

Frank: Then when I get it uh...

Bill: Call me.

Frank: I'll give you a call then we'll get that uh...

Bill: Together.

Frank: ...Together. Okay. Can you uh tenitively could I set the thing up if I get up on this thing Wednesday, could you come down uh say Thursday night?

Bill: Yeah. Probably.

Frank: Okay.

Bill: Okay.

Frank: Okay. I'll get back to you when it comes in.

Bill: Okay.

Frank: Alright.

Bill: Bye.

Frank: Bye-bye.

(Call terminated)

Mr. **Bryant**. At this time, Mr. Chairman, we would like to uncover designated items on the chart for October 2nd.

The **Chairman**. You may proceed.

Mr. **Bryant**. All items on October 2nd; all items on October 4th, and the item on October 5th at 4:22 p.m.

Now, Agent Murphy, the taped conversation we just listened to was between William Borders and Rico; is that correct?

Mr. **Murphy**. Yes, sir.

Mr. **Bryant**. Now, having heard a conversation between William Borders and Rico, did the FBI monitor any conversations between Mr. Borders and Judge Hastings on October 5, 1981?

Mr. **Murphy**. Yes, sir. At approximately 5:12 p.m., pursuant to the court order providing for electronic surveillance of Mr. Borders' office phones, there was an incoming call received at Mr. Borders' office, and the voices were later determined to be those of Judge Hastings speaking with Mr. Borders.

Mr. **Bryant**. Now, you said 5:12 p.m. is when the call was made, is that correct?

Mr. **Murphy**. Approximately, yes, sir.

Mr. **Bryant**. That was just 50 minutes after the call we just heard from Mr. Borders, between Mr. Borders and Mr. Rico; is that correct?

Mr. **Murphy**. Yes, sir.

Mr. **Bryant**. I'll show you House Exhibits 54 A and B and ask you if they are the tape recordings and the transcript of the conversation between Judge Hastings and Mr. Borders.

Mr. **Murphy**. Yes, sir, they appear to be.

Mr. **Bryant**. We would offer into evidence 54A and B at this time.

The **Vice Chairman**. Any objection?

Ms. **Williams**. No objection.

The **Vice Chairman**. They may be admitted.

[The documents referred to were marked House Exhibit Nos. 54A and 54B and were received in evidence.]

Mr. **Bryant**. At this time, we would ask that the technician play the tape recording of the telephone call from Judge Hastings to Mr. Borders at 5:12 p.m. on October 5th.

The **Vice Chairman**. You may proceed.

[A tape recording was played at this point.]

VI.

October 5, 1981 5:12 p.m.

UF: Law Office. One moment.

(Placed on hold)

UF: May I help you?

ALH: Girl; I called long distance and you put me on hold. This is Alcee. How you doing?

UF: I'm sorry; but I have all these lines going in here and I didn't know, if I'd known it was you, they could've waited.

ALH: I understand. Bill's gone?

UF: No. Hold on just a minute.

ALH: Alright.

(Placed on hold)

WAB: Yes, my brother.

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HOUSE MANAGERS' EXHIBIT 54B

ALH: Hey, my man.

WAB: Um hum.

ALH: I've drafted all those ah, ah, letters, ah, for Hemp...

WAB: Um hum.

ALH ...and everything's okay. The only thing I was concerned with was, did you hear if, ah, you hear from him after we talked?

WAB: Yea.

ALH: Oh. Okay.

WAB: Uh huh.

ALH: Alright, then.

WAB: See, I had, I talked to him and he, he wrote some things down for me.

ALH: I understand.

WAB: And then I was supposed to go back and get some more things.

EXHIBIT 54b HOUSE

(2)

ALH: Alright. I understand. Well then, there's no great big problem at all. I'll, I'll see to it that, ah, I communicate with him. I'll send the stuff off to Columbia in the morning.

WAB: Okay.

ALH: Okay.

WAB: Right.

ALH: Bye bye.

WAB: Bye.

Mr. **Bryant**. Agent Murphy, in the earlier conversation on Monday, October 5th, between Mr. Rico and Mr. Borders, Mr. Borders said that the order was going out that day or the next morning; is that correct?

Mr. **Murphy**. Yes, sir, that's correct.

Mr. **Bryant**. Did the FBI take any more steps to try to determine whether the issuance of the order by Judge Hastings was a part of the bribery scheme?

Mr. **Murphy**. On Wednesday, October 7th, we attempted another phone call to Mr. Borders from the undercover agent to see what action he might take if we stated that we did not know that the order was out at this point in time.

Mr. **Bryant**. OK. Now I'll show you Exhibits 55A and B and 56A and B and ask you if they are the tapes and transcripts of Mr. Rico's calls to Mr. Borders' office on October 7th.

Mr. **Murphy**. Yes, sir, they appear to be.

Mr. **Bryant**. Mr. Chairman, I would offer into evidence Exhibits 56A and B and 55A and B.

Ms. **Williams**. No objection.

The **Vice Chairman**. They may be admitted.

[The documents referred to were marked House Exhibit Nos. 55A, 55B, 56A and 56B and were received in evidence.]

Mr. **Bryant**. At this time, we would ask the technician to play the exhibit marked 56A, the conversation previously mentioned.

The **Vice Chairman**. You may proceed.

[A tape recording was played at this point.]

VII.

October 7, 1981 12:19 p.m.

UF: Law Office.

HPR: Yes, William Borders.

UF: Who's calling?

HPR: Frank.

UF: Hold on just a minute.
(Placed on hold)

WAB: Yea, buddy.

HPR: Yea.

WAB: Um hum.

HPR: Frank.

WAB: Um hum.

HPR: Ah, nothing has happened yet, ah...

WAB: Yes it has.

HPR: Uh huh.

WAB: Uh huh.

HPR: I haven't received ah...

WAB: Huh?

HPR: It hasn't arrived at the ah...

WAB: Well, it should. It went out yesterday morning.

HPR: Went out yesterday morning.

WAB: Yea.

HPR: Okay. The, the, ah, what I'd like to do is ah, I've got a, I've got a problem coming up, ah, starting this weekend...

WAB: Uh huh.

HPR: ...and ah, I'd like to get the thing ah, handled...

WAB: Um hum.

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HOUSE MANAGERS' EXHIBIT 56B

EXHIBIT
56b
HOUSE

WAB: ...so that ah, that's why I wanted to make sure that ah, I could ah, get this, the rest of this thing handled for ya.

WAB: Yea, yea.

HPR: So, ah, could we, could you give me a time that you could come down?

WAB: I have to check into that.

HPR: Yea.

WAB: Uh huh.

HPR: So, ah, well, if what I'd like you to, well what I'd like you to do, if you could do it, it'd really screw me up if ah, if it goes beyond ah, ah Friday, because I've got, you know, I told you before that my wife is ah, isn't feeling that well and I, I, ah, agreed to ah, go on a little trip with her...

WAB: Um hum.

HPR: ...and ah, I don't wanna start explainin' any fuckin' thing to my wife, ah...

WAB: Yea.

HPR: So, if we could do it ah, Thursday or Friday or ah, in that area...

WAB: Um hum, um hum.

HPR: ...that would be great. So, ah, what do ya wanna, how do ya wanna leave it?

WAB: Well, where are you now?

HPR: I'm out, I'm out of ah, ah, my house, but ah, you can, you can call me back there. Do you wanna call me back there and ah...

WAB: I'll call you tonight.

HPR: Ah, okay.

WAB: Okay.

HPR: What time?

WAB: I don't know, if I miss ya, I'll call you back.

HPR: Okay. Okay. I'll be home ah, probably from 6:30 on.

WAB: Okay.

HPR: So ah, anytime after that would be good.

WAB: Um hum.

HPR: Okay. Just, that, that's all I have to know is ah, when you want to ah...

WAB: Okay.

HPR: ...and you got the number.

WAB: Okay.

HPR: Okay.

WAB: Alright.

HPR: Right.

WAB: Bye.

Mr. Bryant. Now, during this call, Agent Murphy, Mr. Borders assures Mr. Rico that the order has in fact gone out, and then Mr. Rico tries to make arrangements for the final payment; is that correct?

Mr. Murphy. Yes, sir, that's correct.

Mr. Bryant. And were any arrangements made at that time?

Mr. Murphy. Well, at that point in time, no, sir, they hadn't been made.

Mr. Bryant. When were the arrangements finalized?

Mr. Murphy. Mr. Borders did call the undercover agent later on Wednesday evening, and they discussed the undercover agent going to the Washington area to make the payoff.

Mr. Bryant. All right. I'll show you what has been previously marked as House Exhibits 60A and B and ask you if these are the tape recording and the transcript of Mr. Borders' conversation with Mr. Rico on October 7th.

Mr. Murphy. Yes, sir, they appear to be.

Mr. Bryant. At this time, we offer in evidence Exhibits 60A and B.

Ms. Williams. No objection.

The **Vice Chairman.** They are admitted into evidence.

[The documents referred to were marked House Exhibit Nos. 60A and 60B and were received in evidence.]

Mr. Bryant. At this time, I will ask the technician to play for the committee Exhibit 60A.

[A tape recording was played at this point.]

D

United States Senate
EVIDENTIARY HEARINGS
HOUSE MANAGERS' EXHIBIT 60B

WFO 58-1899

OCTOBER 7, 1981
7:39 EDT
OUTGOING

FRANK: HELLO.

BILL: HELLO, FRANK.

FRANK: YES.

BILL: HOW YA DOIN' BUDDY?

FRANK: OH. MUCH BETTER.

BILL: YEAH.

FRANK: I GOT A CALL EVERYTHING WAS FINE.

BILL: UH HUH.

FRANK: PERFECT.

BILL: UH HUH. I CAN'T GET DOWN THERE THIS WEEK.

FRANK: ALRIGHT. THAT'S ALRIGHT WITH ME. I DON'T CARE.

BILL: (LAUGH)

FRANK: (LAUGH) AS FAR AS I'M CONCERNED UH I'M UH 187 PERCENT BETTER.

BILL: MMM MMM. MMM MMM. MMM MMM.

EXHIBIT
60b
HOUSE

58-1899
Sub T-9

FRANK: THE ONLY PROBLEM I HAVE IS THE FOLLOWING WEEK I'M GONE.

BILL: MMM MMM.

FRANK: SO, UH, WHY DON'T I JUST GET BACK TO YOU OR YOU CAN GET BACK TO ME. I'M COMING BACK THE 17TH.

BILL: MMM MMM. MMM MMM.

FRANK: SO, ANYTIME AFTER THAT IS FINE WITH ME.

BILL: MMM MMM. MMM MMM.

FRANK: SO, UH,

BILL: YOU'RE NOT COMING THIS WAY ARE YA?

FRANK: WELL, I COULD UH I COULD POSSIBLY DO THAT UH BUT I GOTTA GET OUT OF HERE UH BY SUNDAY SO UH I MAY BE ABLE TO UH DO SOMETHING TO UH... YOU WANT ME TO UH YOU WANNA TO JUST COME THAT WAY?

BILL: YEAH. IF YOU CAN.

FRANK: ALRIGHT, UH, WHY DON'T I WHY DON'T I GIVE YOU UH UH WHY DON'T I JUST SEE IF I CAN MAKE ARRANGEMENTS TO GET UP THERE UH FRIDAY...

BILL: O...

FRANK: ...OR THURSDAY.

BILL: ...OKAY.

FRANK: ALRIGHT. AND THEN UH, YOU WANT TO TELL ME NOW OR WHERE OR DO YOU WANT ME TO CALL YOU UH UH AGAIN OR WHAT.

BILL: YEAH. CALL ME WHEN YOU GET IN TOWN.

FRANK: ALRIGHT. OKAY.

BILL: OKAY.

FRANK: OKAY. GREAT.

BILL: RIGHT.

FRANK: THANK YOU.

BILL: BYE.

(CALL TERMINATED)

Mr. **Bryant**. At this time, Mr. Chairman, we would like to uncover on our chart the item on October 5th at 5:12 p.m.

The **Vice Chairman**. You may proceed.

Mr. **Bryant**. And both items on October 7th.

The **Vice Chairman**. You may proceed.

Mr. **Bryant**. Now, Agent Murphy, in this conversation we have just heard, Mr. Rico confirms that the order remitting property has been received; is that correct?

Mr. **Murphy**. Yes, sir, that's correct.

Mr. **Bryant**. And based on this conversation, what plans did the FBI make for the final payment of the balance due on the bribe?

Mr. **Murphy**. One hundred twenty-five thousand dollars was wire-transferred from our headquarters to the Miami area, and that money was picked up in cash form at a local bank, and the serial numbers were recorded and documented, and plans were made to send Mr. Rico and other agents to Washington, DC on Thursday evening, October 8th to complete the payoff.

Mr. **Bryant**. Now, Borders and Rico had left it open as to which day Rico would actually come to Washington; isn't that correct?

Mr. **Murphy**. Yes, sir.

Mr. **Bryant**. Did the FBI learn at some point that Judge Hastings would also be in Washington on Friday, October the 9th?

Mr. **Murphy**. Yes, sir, that's correct.

Mr. **Bryant**. All right. How did you learn that fact?

Mr. **Murphy**. On the electronic surveillance of Mr. Borders' work telephones on Thursday, October 8th.

Mr. **Bryant**. Well, what happened—that is to say, what did you hear with regard to that electronic surveillance of Mr. Borders' phone that informed you that Mr. Hastings was coming to Washington?

Mr. **Murphy**. Basically, Judge Hastings made an incoming phone call to Mr. Borders' office, advising him that he was at a speaking engagement in Georgia and that he would be arriving in Washington, DC at approximately, on a flight number, on Friday, October 9th. The flight would be arriving at 10:40 a.m.

Mr. **Bryant**. All right. I'll show you what have been marked as House Exhibits 61A and B and ask you if they are the tape recording and transcript of that conversation.

Mr. **Murphy**. Yes, sir, they appear to be the proper tape and transcript.

Mr. **Bryant**. I will offer 61A and B into evidence.

Ms. **Williams**. No objection.

The **Vice Chairman**. They are admitted.

[The documents referred to were marked House Exhibit Nos. 61A and 61B and were received in evidence.]

Mr. **Bryant**. At this time, I would ask the technician to play House Exhibit 61A, the conversation I just mentioned.

[A tape recording was played at this point.]

D20

United States Senate

EVIDENTIARY HEARINGS

HOUSE MANAGERS' EXHIBIT 61B

October 8, 1981 9:37 a.m.

WAB: Hello.

ALH: Yes. May I speak with Bill?

WAB: Speaking.

ALH: This is Alcee. How are you?

WAB: How you doin'? Sittin' up here talking' to John Crump.

ALH: Is that right?

WAB: Yea.

ALH: My executive who can't spell Hastings. (Laugh)

ALH: Right on my bar card, Ha - stings. (Laugh)

ALH: Listen here, I'll be there in the morning at 10:40.

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WAB: Uh huh.

ALH: And I'm coming in on Eastern Flight Number 130.

WAB: Wait a minute, let me, give me a pen, John. Where are you?

ALH: I'm in Albany, Georgia.

WAB: Goddamn, you move around, man.

ALH: Yea, man. I come over here, I got a little speech this morning. One of my frat brothers invited me over.

WAB: Eastern?

ALH: Eastern Flight 130.

WAB: 130. At 10:40

ALH: Yea.

WAB: Okay.

ALH: Alright, if you, if you are not there, my back-up is, I'll be at the Washington Hilton.

WAB: Okay.

ALH: Couldn't get in the L'Enfant Plaza.

WAB: We can always get you in there.

ALH: Well, if you can, I would prefer it.

WAB: Okay.

ALH: Or if you cannot, I can, I have a reservation at the Hilton.

WAB: Okay.

ALH: Okay.

WAB: Good enough, buddy.

ALH: I'll see you in the morning.

WAB: Right

ALH: Bye.

WAB: Bye.

Mr. **Bryant**. Now, Agent Murphy, based on that conversation, did the FBI make any changes in its plans for October 9th?

Mr. **Murphy**. It changed my plans in that instead of remaining in Miami, where we thought Judge Hastings might be on October 9, 1981, to interview him in Miami when the payoff was made and the arrest was made, because Judge Hastings was travelling to Washington, DC, I joined the undercover agent and other agents who did go to Washington on the evening of October 8th.

Mr. **Bryant**. So your plan prior to hearing that telephone conversation was that after the arrest that you anticipated you'd make of Mr. Borders, you would interview Judge Hastings in Miami; is that correct?

Mr. **Murphy**. If, subsequent to the arrest, Mr. Borders did not agree to cooperate, yes, we were going to interview Judge Hastings and several of his staff people that would be familiar with the Romano investigation.

Mr. **Bryant**. All right. Did you set up surveillance of Mr. Hastings from the time of his arrival in Washington on October 9th?

Mr. **Murphy**. Yes, sir. The Washington field office agents initiated surveillance at the National Airport there on Friday, October 9th, at approximately 10:40 a.m., and they observed Mr. Borders in his personal vehicle, greeting Judge Hastings when he deplaned.

Mr. **Bryant**. Now, going back to the conversation between Mr. Borders and Mr. Rico, had a definite meeting time and place been set up between them for a meeting in Washington to pay the remainder of the money due on the bribe?

Mr. **Murphy**. No, sir. It had been left that when you arrive in town, Mr. Borders wanted to be called by the undercover agent to finalize the arrangements.

Mr. **Bryant**. In fact, did Mr. Rico call Mr. Borders?

Mr. **Murphy**. Yes, sir, on Friday, October 9th, there were a couple of calls in the morning hours to let Mr. Borders' office know that the undercover agent was in town.

Mr. **Bryant**. And did Mr. Borders call him back?

Mr. **Murphy**. Yes, sir, he did.

Mr. **Bryant**. When did he call him back?

Mr. **Murphy**. I believe he called after the second phone call, approximately 11:30 or 11:40.

Mr. **Bryant**. All right. Let me show you House Exhibits 62A and B, 64A and B, and 63. I will ask you if they are the tapes and transcripts of the telephone calls by Mr. Rico to Mr. Borders' office, and one of the messages taken at Mr. Borders' office, respectively.

Mr. **Murphy**. Yes, sir, they appear to be.

Mr. **Bryant**. At this time, the House would offer into evidence 64A and B, 62A and B, and Exhibit 63.

Ms. **Williams**. No objection.

The **Vice Chairman**. They are admitted.

[The documents referred to were marked House Exhibit Nos. 62A, 62B, 64A and 64B, and 63 and were received in evidence.]

Mr. **Bryant**. We would ask at this time the technician to play Exhibit 64A.

[A tape recording was played at this point.]

VIII.

October 9, 1981 11:46 a.m.

UF: Good morning. Marriott Twin Bridges.

WAB: Yes. Which is, what hotel is this?

UF: Marriott Twin Bridges.

WAB: Oh. Yes. Extension 3103.
(Extension ringing)

HPR: Hello.

WAB: Hello. How ya doin'?

HPR: Alright. How are you?

WAB: When ya get in?

HPR: I got in last night.

WAB: Oh. Good.

HPR: In last night.

WAB: Okay.

HPR: So, I brought all the necessary papers.

WAB: Uh huh.

HPR: So, I'm at the ah, ah Marriott near the airport.

WAB: Uh huh.

HPR: At the Twin Bridges, I think this is called.

WAB: Right. Okay. Why don't you uh, Marriott Twin Bridges,
okay. Is that the one ah, right over by, it's a tall
building?

HPR: Jesus Christ. It's a low, when I came in, it's, it's a low
building and I'm like ah, out back of the ah, of the main
ah, building.

WAB: Okay.

HPR: It's a low building. And it's Twin, it's Twin Bridges.

WAB: Okay.

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HOUSE MANAGERS' EXHIBIT 64B

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HPR: And I've got a lot of ah, you know, it's a lot of paper, so that, I'm in Room 103.

WAB: Okay.

HPR: And ah...

WAB: I'll see ya in about an hour.

HPR: Okay.

WAB: Right.

HPR: Okay. Bye.

WAB: Bye.

Mr. Bryant. Agent Murphy, do you know if Judge Hastings was in Mr. Borders' office when that call was made?

Mr. Murphy. I don't know in fact if he was in there. I know our agents observed him entering that office prior to that phone call being made.

Mr. Bryant. All right. Now, according to that phone call, Mr. Borders was to meet Mr. Rico then at the Marriott Hotel, is that correct?

Mr. Murphy. Yes, sir.

Mr. Bryant. And did Mr. Borders come to the hotel?

Mr. Murphy. Yes, sir, he did.

Mr. Bryant. Did he come into the room that Mr. Rico had?

Mr. Murphy. No, sir. He knocked at the door and stood in the doorway and talked to the undercover agent, but he never physically entered the room.

Mr. Bryant. And what did he tell Rico to do?

Mr. Murphy. He asked Mr. Rico, the undercover agent, if he had the papers with him. The undercover agent advised him that he did; they were in a garment bag which was on one of the beds. And Mr. Borders advised him to get the garment bag and go with him, they were going for a ride.

Mr. Bryant. All right. Did this decision differ from the original plan regarding the arrest of Mr. Borders in any significant way?

Mr. Murphy. Well, basically, we wanted to keep the arrest situation and this final payment in a controlled area, and we had previously set up the hotel room to monitor activities and conversations in that room.

Mr. Bryant. In fact, you had a camera installed in that room, is that correct?

Mr. Murphy. A camera and voice recording equipment, yes, sir.

Mr. Bryant. All right. What was the FBI's reaction to the turn of events, that is, the fact that he wouldn't come in the room, that he said, "Come on, we're going to take a ride?"

Mr. Murphy. Based on a variety of factors, including Mr. Rico's safety, the fact that we were losing control of where the money was at that point in time if they got into Mr. Borders' car, the fact that we had no idea where they were going to, and Mr. Rico was not wearing a transmitter on that day, just a body recorder, we decided amongst ourselves—meaning my supervisors and the other agents in the room—that we would effect the arrest as they were departing the area.

Mr. Bryant. OK. Did your decision to arrest him as they were departing the area differ any from your original plan regarding the arrest of Mr. Borders?

Mr. Murphy. No, sir, basically not. We wanted to arrest Mr. Borders subsequent to the payoff being made, and seek his cooperation.

Mr. Bryant. All right. Mr. Rico was wired for sound, is that correct?

Mr. Murphy. He was wired that day to record conversations, but not to transmit conversations, because we expected the payoff to be paid in the room.

Mr. Bryant. And so a tape recording was made of his involvement with Mr. Borders at the time that the payoff was being made; is that right?

Mr. **Murphy**. Yes, sir, that's correct.

Mr. **Bryant**. I'll show you what have been marked as House Exhibits 65A and B and ask you if they are the tape recording and transcript of the events when Mr. Borders came to the Marriott on October 9th, 1981.

Mr. **Murphy**. Yes, sir.

Mr. **Bryant**. I offer into evidence 65A and B.

Ms. **Williams**. No objection.

The **Vice Chairman**. They are admitted.

[The documents referred to were marked House Exhibit Nos. 65A and 65B and were received in evidence.]

Mr. **Bryant**. At this time, we would like to ask that 65A be played.

[A tape recording was played at this point.]

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HOUSE MANAGERS' EXHIBIT 65B

IX.

October 9, 1981

HPR: This is H. Paul Rico. It's approximately 12:15, on October 9, 1981. I'm in Room 103 at the Marriott Twin Bridges Hotel, in the vicinity of the Washington Airport. I'm expecting William borders to come to this room to pick up $125,000.

(For approximately 22 minutes, the recorder was running for a period of time (approximately eight minutes) or turned off for a period of time (approximately 14 minutes). During the period that the recorder was running, Rico conversed with FBI Agents and an unknown male who was inquiring about a Robert Brown. These things occurred while Rico awaited the arrival of William A. Borders.)

(Knock at door)

WAB: Stay around. You got it with you?

HPR: No. It's in here.

WAB: Come on. Get it w. . ., get it, I wanna take a ride.

HPR: It's a (clears throat) I've got it in my ah, travel case.

WAB: Okay.

WAB: How ya been?

HPR: Alright, alright.

WAB: Catch the door. That's a funny looking travel kit you got there.

HPR: Well, it's my ah, carry on bag.

WAB: Uh huh. Yea. How's your wife doing?

HPR: Well, ah, I'm sure that ah, it will be a lot better. . .

WAB: Okay.

HPR: . . . when we ah, get things squared away.

WAB: Okay. You're going away for a week. Right?

HPR: Yea. I am.

WAB: Okay. When you come back, call me. I'll come down. I want to talk to you.

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HPR: Okay. . .okay.

WAB: Uh, it's turned out to be a nice day.

HPR: Yea. It was cold as a son of a bitch last night.

WAB: Yea. Cold day.

HPR: Tom was so fuckin' nervous about ah, you know, the delay, and . . .

WAB: Yea.

HPR: . . . Yea, pressing me.

WAB: Yea. I understand.

HPR: And, everything is fine.

WAB: There's no problem about it.

HPR: Yea.

HPR: Yea.

(Sirens in background)

WAB: We're busted.

HPR: I'm afraid so.

WAB: Okay.

(Conversation between Rico and FBI Agents.)

Mr. **Bryant**. Agent Murphy, we just heard a tape recording made by virtue of a body recording on the person of H. Paul Rico, the undercover agent, at the time of the arrest of William Borders. Were you present when Mr. Borders was arrested?

Mr. **Murphy**. I was back at the hotel room. Mr. Borders was arrested by agents of the Washington field office as he was exiting the area.

Mr. **Bryant**. All right. And was a log kept of all the events regarding the arrest and interrogation of Mr. Borders?

Mr. **Murphy**. Yes, sir.

Mr. **Bryant**. Let me show you what has been marked as House Exhibit 66, and I'll ask you if this is the arrest log for Mr. Borders.

Mr. **Murphy**. Yes, sir, it is.

Mr. **Bryant**. At this time, we offer into evidence House Exhibit 66.

The **Vice Chairman**. Is there objection?

Ms. **Williams**. No objection.

The **Vice Chairman**. It will be admitted.

[The documents referred to was marked House Exhibit No. 66 and was received in evidence.]

Mr. **Bryant**. Agent Murphy, what time was the arrest of William Borders carried out?

Mr. **Murphy**. At approximately 12:40 p.m.

Mr. **Bryant**. And where was he taken immediately following his arrest?

Mr. **Murphy**. Back to the motel room where Mr. Rico had met him just prior to the arrest.

Mr. **Bryant**. And was Mr. Borders searched at the time of his arrest?

Mr. **Murphy**. Yes, sir, that's correct.

Mr. **Bryant**. Was an appointment book taken from his person?

Mr. **Murphy**. Yes, sir, that's correct.

Mr. **Bryant**. I'll show you a copy of what has been marked as House Exhibit 67 and ask you if this is a copy of a page from the appointment book which was take from Mr. Borders at the time of his arrest.

Mr. **Murphy**. Yes, sir. It is a xerox copy.

Mr. **Bryant**. Do you know what happened to that appointment book?

Mr. **Murphy**. Yes, sir. The original of the book and other personal items that were on Mr. Borders' person when he was arrested were returned to him a couple of days after the arrest.

Mr. **Bryant**. All right. At this time, I would offer into evidence House Exhibit 67.

The **Chairman**. Is there objection?

Ms. **Williams**. I'd like to see that, if I may, for a moment. [Perusing document.] No objection.

The **Chairman**. It will be admitted.

[The document referred to was marked House Exhibit No. 67 and was received in evidence.]

Mr. **Bryant**. Now, you took Mr. Borders back to the motel, is that correct?

Mr. **Murphy**. Agents transported him back there, where we were located, yes, sir.

Mr. **Bryant**. All right. Did Mr. Borders request an attorney?

Mr. **Murphy**. Not initially, no, sir. We advised him of his rights, told him he was being placed under arrest, the reason he was being placed under arrest, and advised him that we wanted to play excerpts from a couple of tape recordings from the two Miami airport meetings, and he stated he was agreeable to listening to them. And we advised him after he heard the tapes if he wished to cooperate in the matter, and at that point he advised he'd like an opportunity to speak to his attorney, so we allowed him to call him.

Mr. **Bryant**. And which attorney did he call?

Mr. **Murphy**. An attorney by the name of John Shorter.

Mr. **Bryant**. And did Mr. Shorter come to the Marriott and confer with Mr. Borders?

Mr. **Murphy**. Yes, sir, he did.

Mr. **Bryant**. And how long did Mr. Shorter stay?

Mr. **Murphy**. I believe the log will reflect that he arrived at approximately 1:31 p.m. and he stated in the area until Mr. Borders was transported from the hotel at about 1:55 or so, back to the FBI office for processing.

Mr. **Bryant**. And when did you leave the Marriott?

Mr. **Murphy**. Within a couple of minutes either before or after that same time frame of 1:55.

Mr. **Bryant**. And when you left the Marriott, where did you go?

Mr. **Murphy**. Myself and two other agents from the Washington field office were proceeding and went directly by automobile to Mr. Borders' law office.

Mr. **Bryant**. For what purpose?

Mr. **Murphy**. They were going there to help—or deliver a subpoena to serve for Mr. Borders—certain records such as travel records, telephone message records, things of that nature—and I was going there in order to locate Judge Hastings and interview him about this matter.

Mr. **Bryant**. Did you believe Judge Hastings was there?

Mr. **Murphy**. The information I had at the time from our surveillance agents was that they had observed him entering the office, and as far as they knew, he was still in there.

Mr. **Bryant**. All right, fine. What time did you arrive at Borders' office?

Mr. **Murphy**. My recollection is approximately 2:20 to 2:30 p.m.

Mr. **Bryant**. And when you first arrived, were you able to get into the office?

Mr. **Murphy**. No, sir. The office was locked, and it did not appear anyone was in there.

Mr. **Bryant**. Did you eventually get in?

Mr. **Murphy**. We waited there for several minutes, and approximately 2:40 or so, Cindy Rogers, the secretary for that law office, arrived at the outside door, and she let us into the building.

Mr. **Bryant**. Did you find Judge Hastings in Mr. Borders' law office?

Mr. **Murphy**. He was not in the reception area where we were standing with Cindy Rogers, and he was never located at that office, no, sir.

Mr. **Bryant**. What steps, then, did you take to try to locate Judge Hastings?

Mr. **Murphy**. Ms. Rogers wasn't sure that she should accept the subpoena for Mr. Borders' records, so I suggested that she contact Mr.——

Ms. **Williams**. Objection. Unresponsive to the question.

The **Chairman**. Would you restate the question, please, and then let the witness respond? I did not detect whether it was responsive or not.

Mr. **Bryant**. All right.

Agent Murphy, what steps did you take to attempt to locate Judge Hastings?

Mr. **Murphy**. When we were at the law office, Ms. Rogers ended up calling John Shorter, who I had earlier met and was advised was going to initially be Mr. Borders' attorney. When she completed her conversation with him, I requested that I be allowed to speak to him, and I asked Mr. Shorter if he had any idea where Judge Hastings was, and if he had any way of contacting him, would he please refer my name and the name of another agent and the phone number of the Washington field office to whoever might be able to get in touch with Judge Hastings.

Then we departed the law office and proceeded to the L'Enfant Plaza Hotel.

Mr. **Bryant**. About what time was it when you were talking to Mr. Shorter?

Mr. **Murphy**. Approximately 2:45 p.m.

Mr. **Bryant**. At this time, Mr. Chairman, I would like to uncover four designated items on our chart of events, the first being October 8th at 9:37 a.m.; the second being October 9th at 11:46 a.m.; the third being October 9th at 12:40 p.m., and the fourth being October 9th at 2:45 p.m.

Agent Murphy, after you spoke with Mr. Shorter, I believe you just testified that you left the office and went to the L'Enfant Plaza Hotel. What time did you arrive at the L'Enfant Plaza Hotel?

Mr. **Murphy**. Approximately 3:00 or a few minutes after.

Mr. **Bryant**. And were you able to locate Judge Hastings at the L'Enfant Plaza Hotel?

Mr. **Murphy**. No, sir. We inquired at the front desk as to what room Judge Hastings was in; they advised us of that room number; we used the house phone several times and didn't get an answer. We went up to the room, knocked on the door and didn't get any answer. And one of the other agents looked around the lobby area and into the bar/restaurant area, and we weren't successful in locating him.

Mr. **Bryant**. When and where did the FBI finally locate Judge Hastings?

Mr. **Murphy**. Later on Friday evening, October 9th, two agents in the Miami division went by Judge Hastings' residence and Patricia Williams' residence, and Judge Hastings was located there, I would think around midnight, or just before or after.

Mr. **Bryant**. All right. At this time, Mr. Chairman, we would offer into evidence Exhibits 45A and B, 46A and B, 47A and B, 48A and B, 49A and B.

The **Chairman**. Would counsel describe what those exhibits are?

Mr. **Bryant**. Yes. Each of these are tape recordings and transcripts of calls which have been made reference to in Agent Murphy's testimony, but were not played in order to save the committee time.

All of them are calls back and forth on October 2nd in Borders' law office with regard to Frank calling Borders.

The **Chairman**. Is there objection to the introduction of these exhibits?

Ms. **Williams**. We have no objection to the introduction of the tapes.

The **Chairman**. They will be admitted.

Mr. **Bryant**. At this time, we will offer into evidence as well Exhibit 51B, which is a transcript of a conversation which occurred on October 2, 1981 between Cindy Rogers and an unidentified male on telephone line 387-1104, previously—it falls into the category of evidence which I just mentioned. These are tapes and exhibits which we did not offer before, which have been testified to, which we felt we could dispense with the playing of in order to save time.

Ms. **Williams**. I would object to the introduction of the transcripts without the tapes being played, Your Honor. The best evidence is the tape.

Mr. **Bryant**. The tape is already in evidence. The tape is 51A; this is 51B.

Ms. **Williams**. But he said he did not play the tape—is that my understanding?

Mr. **Bryant**. That is correct.

Ms. **Williams**. I object.

Mr. **Anderson**. Mr. Chairman, I have, then, the transcript first—and I apologize for intervening——

The **Chairman**. Mr. Anderson, go ahead.

Mr. **Anderson**. We started out with the Chair's ruling that the playing of the tape so the Senators could hear it was the best evidence. Transcripts are typically an aid. We are now moving to the point where those Senators who choose to watch the video will never have an opportunity to hear the best evidence; they will be remitted to transcripts, and the transcripts will not merely be something that they have an opportunity to compare. It will be the only evidence before the Senate of the United States. I cannot conceive of a trial proceeding where you are doing tapes where you don't at least make available to the jurors the best evidence in the best available form, remitting to them such use as they may wish to make of transcripts.

But we are getting it backwards here. We have moved from the point where in a judicial proceeding, the tapes would only be an aid and probably withdrawn from the jury before they retire, to a point where they get both the tapes and the transcripts, to a point where effectively the only thing available to the Senators, and indeed to the 12 of you is if you want to go down to a room someday and listen to a tape, you'll get it.

These tapes should not be admitted unless they are played, unless there is an opportunity, at least in form, to enable the 12 of you and the Senate to hear.

The **Chairman**. It is my understanding that at this point, Mr. Anderson, you are objecting to the introduction of both the tapes and the transcripts that were just admitted a few moments ago?

Mr. **Anderson**. Yes. We are objecting to the admission of any—we have our standing position on transcripts that the Chair has ruled on—we are objecting to the admission of any tape which is not audibly played for the jurors of 12 and audibly available on the closed-circuit television and videotapes for the jury of 100 that will ultimately decide this case.

Mr. **Bryant**. Mr. Chairman.

The **Chairman**. House counsel.

Mr. **Bryant**. All of the information on these tapes and in these transcripts which are accurate reproductions of the tapes has been testified to by a witness. If any Senator wishes to hear the tape as well as hear what the agent said was on the tapes, he can do so, or he can read the transcripts.

We can take the time to play them—the House will be pleased to do that if the Senators wish to hear them all. I think it would not be a useful expenditure of time. But in the event he has a problem with them or he feels they need to be played, he can play them.

Mr. **Anderson**. Mr. Chairman, may I respond?

The **Chairman**. Mr. Anderson?

Mr. **Anderson**. If everything is in evidence that these tapes would show, then don't admit the tapes. If the tapes serve a function in building a record, upon which argument or reference or corroboration may be made in closing argument, then at least let the jurors hear the recorded conversation.

I don't think this is proper. We should not have to play in our case the House's evidence. The House has a choice. If they are satisfied with the proof in Agent Murphy's testimony, fair enough; they can conserve time and go on. But the recordings cannot come into evidence unless they are played for the jurors.

The **Chairman**. Let me ask Representative Bryant is the information on these tapes duplicative of other evidence you have already presented in this case?

Mr. **Bryant**. It is not duplicative, Mr. Chairman. It has been referred to. The central fact has been referred to by other witnesses. But if we are ruled against in this instance, we'll offer all the tapes and play them for the Senators because we think that they should be in evidence.

The **Chairman**. Are there four tapes; is that what I was led to believe?

Mr. **Bryant**. I believe that's correct, yes.

The **Chairman**. How long do these tapes take?

Mr. **Bryant**. There are six or seven conversations on the tapes. I believe in general they are all short, because most of them involve short conversations where an attempt at a phone call was made but was not completed because the other party was not there.

The **Vice Chairman**. Are they shorter than the time already consumed in the argument? [Laughter.]

Mr. **Bryant**. Well, individually, each of them definitely are, yes—and again, the transcripts——

The **Vice Chairman** [presiding]. Well, Representative Bryant, I have difficulty with just allowing tapes in that are being objected to on the theory that they are in general dealing with the same subject matter that a witness has referred to. I think that's not a very good basis for permitting introduction of evidence.

If counsel feels these are crucial to the presentation of your case, I would suggest you go ahead and have a witness identify them and introduce them in the way that the rest of the recorded evidence has been introduced.

Mr. **Bryant**. Well, very well, we will do so.

The **Vice Chairman**. The objection will be sustained.

Mr. **Bryant**. We offered them because of our understanding that the Rules of Evidence have been and would be applied in such a way as to aid this committee in saving time as well as hearing all the information.

At this time, the House moves for a recess in order that we might cue up these tapes and have them prepared for offering to the committee.

The **Chairman**. Can you proceed with other questioning of this witness—we plan a recess at any rate in 15 minutes or so—and you could come back to this?

Mr. **Bryant**. We are at the end of our presentation of Agent Murphy, with the exception of the reading of three stipulations, and presumably the cross-examination of him would begin at this stage.

The **Chairman**. Your direct examination is concluded?

Mr. **Bryant**. With the exception of wishing to offer three stipulations into evidence at this time.

The **Chairman**. OK. We will take a 5-minute recess, to allow you to prepare these tapes for playing to the committee.

[Recess.]

The **Chairman**. The committee will reconvene.

Representative Bryant, Stipulation 101, which has already been agreed to and made part of the evidence, states that, on October 2, 1981, Paul Rico made four calls to William Borders' law offices, all of which were recorded pursuant to Federal wiretap authorizations.

Does the playing of these tapes add anything to that?

Mr. **Bryant**. Could I have just a moment, Mr. Chairman?

Three of those tapes are stipulated to within the statement of that stipulation, yes.

The **Chairman**. Is there any reason why those need to be played, why the committee needs to take its time to hear those?

Mr. **Bryant**. Well, we didn't think so. They've asked that they be played.

The **Chairman**. They have also raised no objection to this stipulation.

Is there any reason that those tapes need to be put into evidence?

Mr. **Bryant**. Well, if they will allow us to put the transcripts in without the tapes, we'll be happy just to put the transcripts in.

Ms. **Williams**. I would object to that. The tapes are the best evidence. If the transcript comes in as an aid to the tape, there is no objection, but the transcript by itself, I would object.

The **Chairman**. OK. Proceed with your direct examination.

Mr. **Bryant**. At this time, Agent Murphy, I would show you Exhibits 44A and 44B, and ask you if this is a tape recording and transcript of a conversation of October 2, 1981, at 10:20 a.m., between Paul Rico and an unidentified receptionist at the office of William Borders?

Mr. **Murphy**. Yes, sir. There are actually two transcripts here, 10:20 a.m. on October 2, 1981, and 12:29 p.m. on the same date, 44B and 45B.

Mr. **Bryant**. At this time, we offer the set of exhibits into evidence.

Ms. **Williams**. No objection.

Mr. **Bryant**. We would ask that these be played by the——

The **Chairman**. Counsel will permit this, but I can tell you, I have very great difficulty seeing how the substance of this conversation strengthens the House's case.

Mr. **Bryant**. Mr. Chairman, the transcript lays out exactly what the phone call that was made consists of, and we'd like it to be in evidence for the members of the Senate to see.

The **Chairman**. I can see how the fact that the call was made is a relevant issue and something you would want in your case. The substance of the conversation seems to me to be fairly beside the point, but we'll permit it to be played.

Mr. **Bryant**. I'd like to observe that this series of calls leads to the final call, where Borders had the call patched through to him from the undercover agent, and it demonstrates the trouble that was gone to in order to see to it that that conversation took place. That's why we offer into evidence the fact that this happened and the way in which it happened.

[The documents referred to were marked House Exhibit Nos. 44A and 44B and were received in evidence.]

The **Chairman**. You can go ahead and play the tape.

Mr. **Bryant**. At this time we would ask that Exhibit 44A be played.

[A tape recording was played at this point.]

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EVIDENTIARY HEARINGS
HOUSE MANAGERS' EXHIBIT 44B

Date: 10/2/81
Time: 10:20 AM
Location of Interception: H. Paul Rico's Residence
Miami Shores, Florida
Type of Interception: Consensually Monitored
(305) 757-6530 to
(202) 387-1100

Participants: H. Paul Rico (HPR)
Unidentified Female (UF)

Administrative: Unintelligible (UI)

UF: Law Office.

HPR: Attorney Borders, please.

UF: He's not in. (UI) there a message?

HPR: Ah, could I speak to his secretary?

UF: This is she.

HPR: Dear, ah, this is Frank from Florida. And it's important that I talk to him. And ah, you, when do you expect him back?

UF: I don't know what time he'll be in the office, I expect him in later this evening, he may come in before then.

HPR: Alright...

UF: Do you want to leave a number?

HPR: ...I'm gonna, I'm gonna call back at ah, 12:30, and ah, you can tell him that I called. And that it's...

UF: It's just Frank?

HPR: Frank. Right. From ah, Florida, and I, I have something that's important and I wanted to talk to him.

UF: Do you wanna leave your number?

EXHIBIT
44b
HOUSE

IC 172-[illegible]C

HPR: I, I'm not ah, in a position to leave a number, it would be better off if I called you back at 12:30, and ah, at that time if, if he wanted to give me a number, I, whatever, I'll call you back at 12:30.

UF: Alright. Thank you.

HPR: Okay. Bye.

[The documents referred to were marked House Exhibit Nos. 45A and 45B and were received in evidence.]

Mr. **Bryant.** At this time, Agent Murphy, I would ask you if the exhibits I have placed in front of you, 45A and 45B, House Exhibits, are a tape recording of telephone conversations of October 2, 1981, at 12:29 p.m., between H. Paul Rico and an unidentified receptionist at Border's office, and if 45B is a transcript of that conversation?

Mr. **Murphy.** Yes, sir, it appears to be.

[A tape recording was played at this point.]

United States Senate
EVIDENTIARY HEARINGS
HOUSE MANAGERS' EXHIBIT 45B

WFO 58-1899 1

OCTOBER 2, 1981
12:29 P.M. EDT
INCOMING

UNKNOWN FEMALE:	(INAUDIBLE)
FRANK:	THIS IS FRANK. IS UH BOB (INAUDIBLE)...
UNKNOWN FEMALE:	OKAY. YOU'RE CALLING FROM FLORIDA.
FRANK:	THAT'S RIGHT.
UNKNOWN FEMALE:	YEAH. MR. BORDERS IS IN A TRIAL. HE WAS HERE EARLY THIS MORNING AND HE CALLED UHM, BUT HE SAID HE WAS DUE TO TR START IT OR NOT START IT TODAY AND HE WAS SUPPOSE LE HE LET ONE OF THE LAW PARTNERS KNOW THAT HE DID GO TO COURT FOR THE TRIAL...
FRANK:	WERE YOU ABLE...
UNKNOWN FEMALE:	...AND I HAVEN'T...
FRANK:	...WERE YOU ABLE TO TELL HIM I CALLED?
UNKNOWN FEMALE:	NO. I HAVE NOT SPOKEN WITH HIM DIRECTLY. I JUST GOT THAT BY WAY OF ONE OF HIS LAW PARTNERS.
FRANK:	WELL, IT'S VERY IMPORTANT AND I I KNOW IT'S IMPORTANT TO HIM TOO, SO THAT UH I'LL I'LL HAVE TO CALL BACK WOULD GIVE ME A NU (VOICE FADED) ANY IDEA? LIKE...
UNKNOWN FEMALE:	WELL, WE DO HAVE APPOINTMENTS SCHEDULED THIS EVENING. I SUGGEST THAT YOU KNOW THAT YOU CALL MAYBE ABOUT 4.
FRANK:	WELL...

EXHIBIT
45b
HOUSE

58-1899-S-65-24

UNKNOWN FEMALE: YOU KNOW, IT'S HARD TO SAY EXACTLY WHEN HE'S GONNA TO BE HERE SIR. I I UHM CAUSE BILL YOU KNOW I CAN'T I DON'T EVEN KNOW WHAT COURTROOM HE'S IN OR ANYTHING. I KNOW WHAT MATTER HE'S ON, AND I COULD POSSIBLY...

FRANK: WELL...

UNKNOWN FEMALE: ...TRY TO TRACK HIM DOWN AND GET A MESSAGE TO THE CLERK.

FRANK: SURE.

UNKNOWN FEMALE: BUT THAT'S THE THAT'S THE ONLY POSSIBLE THING THAT I CAN DO.

FRANK: WELL, I'LL I'LL KEEP CALLING HIM ANYWAY, BUT I'LL I'LL I'LL CALL AGAIN UH, BETWEEN TWO THIRTY AND THREE AND THEN UH IF HE'S NOT THERE, I'LL TRY AGAIN AFTER FOUR.

UNKNOWN FEMALE: OKAY.

FRANK: OKAY?

UNKNOWN FEMALE: ALRIGHT

FRANK: BUT IF YOU CAN UH IF HE CALLS IN, YOU TELL HIM...

UNKNOWN FEMALE: I'LL DEFINATELY LET HIM KNOW.

FRANK: ... BECAUSE IT IS IMPORTANT.

UNKNOWN FEMALE: OKAY.

FRANK: THANK YOU.

UNKNOWN FEMALE: MMM MMM.

(CALL TERMINATED)

The **Chairman**. Are those being offered into evidence?

Mr. **Bryant**. Yes.

The **Chairman**. Is there objection?

Mr. **Anderson**. Assuming they will be played, no.

The **Chairman**. The tape can be played and the exhibits will be admitted into evidence.

Mr. **Bryant**. Mr. Chairman, I would like to point out at this time that Stipulation No. 101, which the Chairman made reference to, states only that, on October 2, 1981, H. Paul Rico made four calls to William Borders' law offices, all of which were recorded pursuant to Federal wiretap authorization. A person reading the bare transcript of this case would not know, reading only that stipulation, what took place in those phone calls.

I offer that as further argument for when we need to—an explanation for wanting to play them, the tapes themselves.

[A tape recording was played at this point.]

Mr. **Bryant**. At this time, Agent Murphy, I would like to show you 46A and 46B, and ask you if this is a tape recording and a transcript of that conversation between William Borders and someone in his office named Bob?

Mr. **Murphy**. Yes, sir, it appears to be.

Mr. **Bryant**. I offer into evidence Exhibits 46A and B.

The **Chairman**. Any objections to these exhibits, assuming the tape is played?

Mr. **Anderson**. No objection.

The **Chairman**. They'll be admitted.

[The documents referred to were marked House Exhibit Nos. 46A and 46B and received in evidence.]

[A tape recording was played at this point.]

United States Sena
EVIDENTIARY HEARINGS
HOUSE MANAGERS' EXHIBIT 46B

WFO 58-1899 1

October 2, 1981
2:20 p.m. EDT
Incoming

Bob: Hello.

Bill: Hey, Bob.

Bob: Hey, how ya doing Bill.

Bill: Okay. Is uh, Cindy still there?

Bob: Uh, she stepped out to get a sandwich.

Bill: Okay. Did uh, someone call me from Florida?

Bob: Uh, no. Frank hasn't called yet.

Bill: Okay. I'm gonna uh, I'm still in court. I'm gonna run out to a pay phone and call you back and give you a number where you can call me. Okay.

Bob: Okay. Then.

Bill: (inaudible)

Bob: I'm gonna I I gotta take the matters down to the court to be filed myself, so uh, you know I just, we can just get together some other time and go see that other woman.

Bill: Okay. What time you gonna do that?

Bob: RIGHT NOW.

EXHIBIT
46b
HOUSE

58-1899 Sub67-23

Bill: Huh?

Bob: I mean, I need, now.

Bill: Okay. Cause (inaudible) I can come back in. You can come down here and file the papers and then we'll go over it there. But, we can do it some other time.

Bob: Uh, okay. Well, you gonna call back.

Bill: Yeah.

Bob: Alright then.

Bill: Bye.

Bob: Bye.

(call terminated)

The CHAIRMAN. Representative Bryant, the exhibits you introduced indicated that was a conversation between Bill and Bob. Who's Bob?

Mr. BRYANT. Bob is an unidentified person answering the telephone in Mr. Borders' office.

The CHAIRMAN. That doesn't help a lot.

Mr. BRYANT. That's all we know, but it helps inasmuch as it shows that Bill was calling back in to find out if he had had a phone call from someone from Florida

The CHAIRMAN. Proceed with the next exhibit.

Mr. BRYANT. At this time, Agent Murphy, I would show you a tape recording with Exhibits 47A and B, and ask if it is a tape recording of telephone conversations of October 2, 1981, at 2:49 p.m., between Borders and an unidentified receptionist at Mr. Borders' office?

Mr. MURPHY. Yes, sir.

Mr. BRYANT. At this time, we would offer into evidence Exhibits 47A and B.

The CHAIRMAN. Is there objection assuming the tape is played?

Mr. ANDERSON. No.

The CHAIRMAN. The exhibits will be admitted.

[The documents referred to were marked House Exhibit Nos. 47A and 47B and were received in evidence.]

[A tape recording was played at this point.]

The following conversation occurred on October 2, 1981, at 2:49 p.m., as an incoming call over 387-1101, from William Borders to his receptionist.

Unknown Female: Law Office.

Borders: Hey, did Frank call?

Unknown Female: No, he hasn't called yet.

Borders: Okay. I'm at uh Dan Silverman's office. 659-4030.

Unknown Female: Okay.

Borders: And, if yuu put him on if he calls, put him on hold and call me...

Unknown Female: Mmm Mmm.

Borders: ...cause I'm going downstairs and have a sandwich and if they come get me a nu and leave a number, and I'll call him back in ten minutes.

Unknown Female: Okay.

Borders: Alright.

Unknown Female: Mmm Mmm.

Borders: Bye.

(Call terminated)

United States Senate
Evidentiary Hearings 1°
House Managers' Exhibit 47B

Exhibit
47b
House

58 1859-Sub-B 22

Mr. **Bryant.** At this time, Agent Murphy, I am going to show you Exhibits 48A and B, and ask you if this is a tape recording of a telephone conversation of October 2, 1981, at 3:01 p.m., between H. Paul Rico and an unidentified receptionist of Borders' office.

Mr. **Murphy.** Yes, sir, they appear to be that.

Mr. **Bryant.** I offer into evidence Exhibits 48A and 48B.

The **Chairman.** If there is no objection, they will be admitted.

[The documents referred to were marked House Exhibit Nos. 48A and 48B and were received in evidence.]

[A tape recording was played at this point.]

United States Senate
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EVIDENTIARY HEARINGS
HOUSE MANAGERS' EXHIBIT 48B

WFO 58-1899

October 2, 1981
3:01 p.m. EDT
Incoming

Unknown Female: Law Office. One moment.

(Placed on hold)

Unknown Female: May I help you.

Frank: Yes, William Borders (inaudible).

Unknown Female: He's not in. Who's calling?

Frank: Frank.

Unknown Female: Listen Frank. Okay. Hold on just a minute. I'm gonna try to reach him. He's at a at another office, but uh, I told him you'd be calling back. Hold on just a minute.

Frank: Alright.

(Placed on hold)

Unknown Female: Hello.

Frank: Yes.

Unknown Female: Okay. He went to get a sandwich and they're going to get him. Can you call back in 10 minutes and I can hook you up.

Frank: Alright. Alright.

Unknown Female: Okay.

EXHIBIT
48b
HOUSE

58-1899-SubJ-01

FRANK: ALRIGHT.

UNKNOWN FEMALE: ALRIGHT.

FRANK: 10 MINUTES AT THIS PHONE NUMBER.

UNKNOWN FEMALE: YES.

FRANK: ALRIGHT.

UNKNOWN FEMALE: OKAY.

FRANK: BYE.

(CALL TERMINATED)

Mr. **Bryant**. Agent Murphy, I'd like to show you Exhibits 49A and B from the House, and ask you if that is a tape recording transcript of a telephone conversation of October 2, 1981, at 2 p.m., between William Borders' office and William Borders?

Mr. **Murphy**. Yes, sir.

Mr. **Bryant**. I offer into evidence at this time Exhibits 49A and 49B.

The **Chairman**. Is there objection?

Ms. **Williams**. No objection.

The **Chairman**. They'll be admitted.

[The documents referred to were marked House Exhibit Nos. 49A and 49B and were received in evidence.]

Mr. **Bryant**. At this time, I would like to ask that 49A be played.

[A tape recording was played at this point.]

The following conversation was recorded on October 2, 1981, at 3:02 p.m. It was an outgoing call placed over 387-1100 by Borders' receptionist to Borders at Silverman's office.

Unknown Female #1: National Environmental Control.

Unknown Female #2: Yes. Is Mr. Silverman there? I'm trying to reach Bill Borders.

Unknown Female #1: (inaudible)

Unknown Female #2: Mmm Mmm.

(placed on hold)

(another telephone line rings)

United States Senate
EVIDENTIARY HEARINGS
HOUSE MANAGERS' EXHIBIT 49B

Unknown Female #2: Hello. May I help you?

Borders: Hello. Hello.

Unknown Female #2: Yes. Bill, uh, okay, I t I told him to call back in ten minutes...

Borders: Mmm.

Unknown Female #2: ...cause uh uhm can you call me back in exactly ten minutes?

Borders: What you can do is call hook us up here, you know, you call me...

Unknown Female #2: Yeah. That's what I was gonna do, but I thought you said you wanted to get a sandwich.

Borders: Well, we never left.

Unknown Female #2: Oh.

EXHIBIT
49b
HOUSE

58-1896-S-BC-7.20

Borders: So.

Unknown Female #2: Well...

Borders: Okay.

Unknown Female #2: ...uhm, uh, when he calls back, I'll just hook you up here.

Borders: Okay.

Unknown Female #2: That's what I was gonna do, but uh...

Borders: Okay.

Unknown Female #2: ...I thought you would probably be gone...

Borders: Okay.

Unknown Female #2: ...for him you know hold so long and he's gonna call me back in ten minutes. Yeah, this is Bill.

Robert: (inaudible)

Unknown Female #2: Uhm, Robert said he's headed down to the courthouse.

Borders: Okay.

Unknown Female: Alright.

Borders: Bye.

Unknown Female: (to Robert) He said okay. He said wait a minute. Uh, I have a nu...

(call terminated)

Mr. **Bryant**. Agent Murphy, I'd like to ask you at this time to identify 51A and B and tell the committee whether or not this is a tape recording of a transcript of a conversation of October 2, 1981, at 4:50 p.m., between an unidentified secretary of Borders' office and an unidentified receptionist at Judge Hastings' chambers?

Mr. **Murphy**. Yes, sir, they appear to be that.

Mr. **Bryant**. At this time, the House offers into evidence Exhibits 51A and B.

The **Chairman**. Is there objection?

Ms. **Williams**. No objection.

The **Chairman**. They'll be admitted.

[The documents referred to were marked House Exhibit Nos. 51A and 51B and were received in evidence.]

Mr. **Bryant**. I'd like to ask if 51A could be played at this time.

[A tape recording was played at this point.]

The following is a conversation which occurred on October 2, 1981, at 4:50 p.m. between Cindy Rogers and an Unidentified Male on telephone line 387-1104:

Unknown Male:	Hastings' Chambers.
Rogers:	Yes. Is Judge Hastings available?
Unknown Male:	No. He has left.
Rogers:	For the day.
Unknown Male:	Yes.
Rogers:	Alright. Thank you.
Unknown Male:	You're very welcome.
Rogers:	Mmm Mmm.

(call terminated)

United States Senate
EVIDENTIARY HEARINGS
HOUSE MANAGERS' EXHIBIT 51B

10

EXHIBIT
51b
HOUSE

58-1988-Sub C7-18

Mr. **Bryant**. Mr. Chairman, that's the last of the tape recordings and transcripts that we earlier mentioned.

At this time, the House would offer into evidence Stipulations 127, 128 and 129.

The **Chairman**. Is there objection to those?

Ms. **Williams**. There is no objection.

The **Chairman**. They will be admitted into evidence.

[Stipulation Nos. 127, 128 and 129 were received in evidence.]

Mr. **Bryant**. The House offers Stipulation of Fact 127, which is that in the late summer of 1981, the National Bar Association planned a testimonial dinner ("dinner/boat ride") boat ride in honor of William Borders, the immediate past president of the organization.

Stipulation No. 128 is that Judge Hastings was a co-sponsor of the testimonial dinner/boat ride organized by the National Bar Association in honor of William Borders.

Stipulation of Fact No. 129 is that the National Bar Association dinner/boat ride in honor of William Borders was scheduled for October 9, 1981.

At this time, the House would offer the following stipulations into evidence, which we do not need to read into the record.

We offer into evidence Stipulations Nos. 31, 34, 90, 91, 99, 115, 117, 121, 123, 125, 136, 142, 145 and 146.

Ms. **Williams**. No objection.

The **Chairman**. Those stipulations will be admitted into evidence.

[Stipulation Nos. 31, 34, 90, 91, 99, 115, 117, 121, 123, 125, 136, 142, 145 and 146 were received in evidence.]

[The stipulations are as follows:

31. The FBI arranged for H. Paul Rico, a retired FBI agent, to impersonate Frank Romano.

34. On Thursday, September 10, 1981, Cynthia Rogers recorded the following reservation for William Borders for travel from Washington to Miami to West Palm Beach to Washington:

Fri. - Air Fla. #131: 7:30 - 9:45.
Sat. - Eastern #890: 9:25 - 9:51 a.m.
Sun. - Delta - West Palm #608: 7:00 a.m. - 9:49 - Atlanta.
11:20 arrive Nat.
125
46
149 $320

90. On September 18, 1981, William Borders and Madeline Petty flew from Las Vegas, Nevada to Washington National Airport. Borders did not leave the Washington National Airport and he departed at 9:20 p.m. for Miami, Florida, via Eastern Airlines flights 459 and 655.

91. On September 19, 1981, William Borders registered at the Miami International Airport Hotel at 2:25 a.m.

99. On September 19, 1981, William Borders left Miami, Florida, for Washington, D.C. on Eastern Airlines flight 190, scheduled to depart the Miami International Airport at 10:55 a.m.

115. On October 5, 1981, at 4:22 p.m., William Borders and H. Paul Rico spoke to each other by telephone and the conversation was recorded pursuant to a federal wiretap authorization.

117. On October 5, 1981, at 5:12 p.m., William Borders and Judge Hastings had a telephone conversation, which was recorded pursuant to a federal wiretape authorization.

121. On October 7, 1981, at 12:19 p.m., William Borders and H. Paul Rico spoke by telephone, and the conversation was recorded pursuant to a federal wiretap authorization.

123. On October 7, 1981, at 7:39 p.m., William Borders and H. Paul Rico spoke by telephone and the conversation was recorded pursuant to a federal wiretap authorization.

125. On October 8, 1981, at 9:37 a.m., William Borders and Judge Hastings spoke by telephone and the conversation was recorded pursuant to a federal wiretap authorization.

136. At 11:13 a.m. on October 9, 1981, a person described as "Frank" called William Borders' law office and left a message for Borders to call him.

142. On October 9, 1981, when William Borders and H. Paul Rico got into Borders' car, Rico placed a bag containing $125,000 on the seat between them.

145. Following his arrest on October 9, 1981, William Borders telephoned his attorney John Shorter. Mr. Borders then made arrangements for Mr. Shorter to come to the Twin Bridges Marriott Hotel.

146. On Friday, October 9, 1981, attorney John Shorter arrived at the Twin Bridges Marriott Hotel and spoke with William Borders who asked John Shorter to represent him.]

Mr. **Bryant**. Mr. Murphy, I would like to ask you to look at an exhibit marked as 67A, and ask you if this is a copy of the entire appointment book taken from William Borders on the day of his arrest?

The **Chairman**. Counsel, was that 67A?

Mr. **Bryant**. 67A. You will not have that in your exhibit books.

Mr. **Murphy**. It reflects the full year from the total book that was xeroxed.

Mr. **Bryant**. All right. This is the complete appointment book that was taken from Mr. Borders, and it is the book, is it not, from which Exhibit 67, that is, the page I made reference to earlier, which we offered into evidence, was an excerpt, is that correct?

Mr. **Murphy**. Yes, sir. There's a page in here that reflects the April 4th, April 5th entry that was referred to earlier.

Mr. **Bryant**. All right.

At this time, we offer into evidence as our final presentation of direct evidence with this witness Exhibit 67A.

The **Chairman**. Is there objection?

Ms. **Williams**. Yes. For what purpose is the entire book being offered? You've already put in the relevant slips, is that correct?

The **Chairman**. Could counsel explain the purpose for which the entire appointment book is offered into evidence?

Mr. **Bryant**. In previous proceedings, the respondent has objected to the offering of an excerpt or page of an appointment book was somehow a delivery of the full evidence to the committee.

In order that we may not be faced with some kind of argument, we're going through that later on, we want to offer a copy of the full appointment book, we offer it for no purpose other than that.

The **Chairman**. But the pages which are relevant in the eye of the House managers have already been admitted into evidence, have they not?

Mr. **Bryant**. That's correct.

The **Chairman**. Well, on that basis, the objection would be sustained and we would not admit it into evidence.

Mr. **Bryant**. At this time, Mr. Chairman, the House will pass this witness.

The **Chairman**. Is there cross examination of the witness?

Ms. **Williams**. There is.

CROSS EXAMINATION

Agent Murphy, good morning.

Mr. **Murphy**. Good morning.

Ms. **Williams**. Is it fair to say that, as the case agent in this case, you are familiar with all the facts that were developed during the investigation?

Mr. **Murphy**. I would say I'm familiar with most of the facts or should be, yes, ma'am.

Ms. **Williams**. Well, is one of your duties to supervise the agents involved in collecting the facts in this investigation?

Mr. **Murphy**. To coordinate with those agents. I wouldn't necessarily be considered their direct supervisor.

Ms. **Williams.** Do you receive copies of documents that report the findings of the various agents who uncovered evidence in this investigation?

Mr. **Murphy.** I should be receiving that information, yes, ma'am.

Ms. **Williams.** All of it?

Mr. **Murphy.** All of it that, you know, I should be aware of.

Ms. **Williams.** All right, then. So, it would be fair to say, then, that you have total knowledge of the facts uncovered in this investigation?

Mr. **Murphy.** I believe so; yes, ma'am.

Ms. **Williams.** Now, this particular undercover investigation was code named Apple Eye, is that correct?

Mr. **Murphy.** That's correct.

Ms. **Williams.** Was it always code named Apple Eye?

Mr. **Murphy.** Before it received the code name Apple Eye, it had no code name, it just carried the names of the individuals involved, their titles, the character of the case and the office, what we call the office of origin. The day we submitted or requested from the Bureau a change of code name to, as it turned out to be, Apple Eye, we submitted another code name earlier that morning, they said that had already been used or wasn't available.

Ms. **Williams.** Do you recall what that code name was?

Mr. **Murphy.** Usually, when we select a code name, we will, you know, just pick something out of the air that we might feel relevant.

Ms. **Williams.** Out of the air, but relevant?

Mr. **Murphy.** If the agent has the opportunity to pick a code name, it's up to him to pick the code name.

Ms. **Williams.** All right. Now, is this Apple Eye as in "She's the apple of her father's eye?"

Mr. **Murphy.** No, ma'am. The way I recall those events happening was when the name that we had selected to use, when I called up to the Bureau to find out if that was acceptable, they said no, it was already in use or had been used before, or whatever the reason was, we couldn't use that one. I said, well, okay, you fellows come up with a name. They said, well, we have four or five pre-approved code names for cases that might come up in New York, and I said, well, give me one, and they said Apple Eye, and I said fine, that's it.

Ms. **Williams.** Thank you.

May I approach the witness?

The **Chairman.** Yes, you may.

Ms. **Williams.** This is what has been marked as Respondent's Exhibit No. 8, and I ask if you have seen that before?

Just so the committee knows these exhibits are exhibits that were turned over to us by the House, I ask you, Agent Murphy, have you seen that before? Can you tell us what that is?

Mr. **Murphy.** Yes, ma'am. It's a xerox copy of——

Senator **Rudman.** Mr. Chairman, I'm having trouble hearing counsel. Maybe if she——

The **Chairman.** If counsel could return to the podium to do the questioning, that would be helpful.

Ms. **Williams.** What was the document I just showed you, Mr. Murphy?

Mr. MURPHY. It's a xerox copy of a teletype that I had prepared during the course of the investigation. I believe it was dated August 24th.

Ms. WILLIAMS. Thank you.

At this time, I would move into evidence Respondent's Exhibit 8.

The CHAIRMAN. Is there objection to that exhibit?

Mr. BRYANT. I'd like to have a copy of this exhibit, so that we can read it. In spite of the comments by counsel, we don't recall having delivered this document to the respondent. We may have, but it does not look familiar to us.

The CHAIRMAN. We can have a copy made. Is there objection to it being admitted at this time?

Mr. BRYANT. There's been no offering of relevance for this exhibit. What's the relevance of this? I would object on the basis of relevance until an argument is made that it is somehow relevant.

The CHAIRMAN. Would counsel for respondent please explain to the committee what the exhibit is offered for, what purpose it's offered for?

Ms. WILLIAMS. Yes, Mr. Chair.

This is a FBI teletype dated August 24, 1981, signed by William Murphy, having to do with the Apple Eye investigation and how it originated and its name.

The CHAIRMAN. The exhibit will be admitted--and a copy will be made for the House managers—for whatever weight the committee wants to give to it.

[The document referred to was marked Respondent's Exhibit No. 8 and was received in evidence.]

Ms. WILLIAMS. Agent Murphy——

Mr. MURPHY. Yes, ma'am.

Ms. WILLIAMS [continuing]. Isn't it true that originally this investigation was named Sunburn, and by this telex of August 24, 1981, the name was changed to Apple Eye?

Mr. MURPHY. No. That particular day, when that teletype was prepared by me, that is the typed version of a teletype. When someone types that up first, it's for proofreading, and then a transmittal tape is generated from that, but that is strictly to proofread what's going to end up on the transmittal tape that goes on a machine.

Earlier that morning, Sunburn was the code name we asked them to approve. They said you can't use that one, it's either been used or unavailable, and that's when I had the conversation with a supervisor up at headquarters who suggested why don't you take one of these names off the list of names that are available for future New York office code names.

Ms. WILLIAMS. And for the record, let me just read from this telex the following:

> Changed Sunburn, and it's scratched out, Apple Eye bribery. Re: Miami teletype to Director and WFO August 24, 1981, and Miami Telco to Bureau August 24, 1981. Title mark changed to reflect code name Apple Eye. Title previously carried as Santo Trafficante, William Borders.

Mr. MURPHY. That's what I just explained, ma'am.

Ms. WILLIAMS. Fine.

Mr. MURPHY. The purpose, if I could add something, the purpose——

Ms. WILLIAMS. I object to your answering when there is not a question on the floor, sir.

Mr. MURPHY. Fine.

The CHAIRMAN. The witness will be permitted to explain his answer, if he has something additional he wants to add.

Mr. MURPHY. The purpose for a code name is strictly to cut down the length of time it takes you to prepare a teletype, when you have multiple subjects and/or characters in your case title, and it's just a way to facilitate the paperwork you have to do during the course of an investigation.

Ms. WILLIAMS. During the course of your investigation, you were able to acquire information regarding the background of both of the targets of the Apple Eye investigation, is that not correct?

Mr. MURPHY. During the course of the total investigation, yes, ma'am.

Ms. WILLIAMS. All right. And both of the targets of the investigation you found were held in high esteem in their respective communities, is that not correct?

Mr. MURPHY. I would say that's a true characterization, yes, ma'am.

Ms. WILLIAMS. They were the apple of the eye of their communities, is that not correct?

Mr. MURPHY. You're using that characterization.

Ms. WILLIAMS. Yes, I am.

Mr. MURPHY. I have no idea.

Mr. WILLIAMS. Now, let me shift your attention for a moment to Mr. Dredge, William Dredge.

Mr. MURPHY. Yes, ma'am.

Ms. WILLIAMS. Now, Mr. Dredge had a problem in Baltimore, didn't he. that he wanted to fix? That's why he is involved in this case, is that correct?

Mr. MURPHY. Yes, ma'am.

Ms. WILLIAMS. And that problem involved an indictment that issued out of Baltimore?

Mr. MURPHY. That's correct. U.S. District Court in Baltimore, Maryland.

Ms. WILLIAMS. A seven-count indictment.

Mr. MURPHY. Yes, ma'am.

Ms. WILLIAMS. What did the indictment allege, do you know?

Mr. MURPHY. My recollection is it had to do with a DEA investigation that ended up with a narcotics-type indictment involving quaaludes, I believe.

Ms. WILLIAMS. And four of the seven counts related to methaquaaludes, isn't that correct?

Mr. MURPHY. Yes, ma'am.

Ms. WILLIAMS. And do you know how many quaaludes we're talking about in that indictment?

Mr. MURPHY. My recollection is 20,000.

Ms. WILLIAMS. Twenty-five thousand or more?

Mr. MURPHY. Could be 25,000 or more, but I don't recall specifically.

Ms. WILLIAMS. But it's not 3,400, is it?

Mr. MURPHY. Thirty-four hundred doesn't ring a bell.

Ms. WILLIAMS. All right. Thank you.

Now, would it surprise you to know that Mr. Dredge said it was no more than 3,400 methaquaaludes when he testified here previously?

Mr. **Murphy**. Would it surprise me?

Ms. **Williams**. Yes, would it?

Mr. **Murphy**. No, ma'am. I don't know. I read the indictment, I think—I'm not even sure I read the indictment, but I was advised of the contents, and I never had conversations specifically with him regarding that matter because, he was under indictment in that matter.

Ms. **Williams**. All right. Well, I want to know, do you believe in the veracity of your confidential informant in this case?

Mr. **Murphy**. Mr. Dredge was a cooperating witness, which is the terminology I would use regarding him.

Ms. **Williams**. I understand that, but——

Mr. **Murphy**. And from what he told me regarding this particular investigation, except for conversations which he had with Mr. Borders, who—I imagine only Mr. Borders would be able to corroborate that end of those conversations. When he told me things were going to happen or occur, we were able to corroborate them, and if he said he could do something, he ended up doing it.

Ms. **Williams**. Does that mean you believe in the veracity of your confidential informant?

Mr. **Murphy**. In regards to this matter, yes, ma'am.

Ms. **Williams**. Now, in that indictment, does it not also accuse Mr. Dredge of conspiracy to commit murder?

Mr. **Murphy**. I don't recall that. It may have.

Ms. **Williams**. And further, to commit murder and also bribery, isn't that correct?

Mr. **Murphy**. I believe that both of those things were probably mentioned. But again I was not able to have a conversation with him about that indictment. If you read it to me, or refreshed my recollection of that, I might recall it.

Ms. **Williams**. OK. Now, Dredge had a rap sheet that dated back to 1943, didn't he?

Mr. **Murphy**. Approximately, yes, ma'am.

Ms. **Williams**. All right. And he was an experienced fence and an experienced burglar.

Mr. **Murphy**. That's my knowledge of the man at that point in time, yes, ma'am.

Ms. **Williams**. But you believed everything that he told you about this investigation, is that correct?

Mr. **Murphy**. I believed what we were able to corroborate.

Ms. **Williams**. Can you identify the exhibit that I am handing you now, Mr. Murphy?

Mr. **Murphy**. Yes, ma'am, it's a xerox copy of a teletype that was prepared by me on August 28, 1981.

Ms. **Williams**. Thank you. And at this time, I would move into evidence the telex dated August 28, 1981.

Mr. **Bryant**. No objection.

The **Chairman**. What is that identified as, what exhibit number?

Ms. **Williams**. It is Exhibit No. 9

The **Chairman**. It will be admitted.

[The document referred to was marked Respondent Exhibit No. 9 and was received in evidence.]

Ms. WILLIAMS. How did you learn about the past criminal enterprises of Mr. Dredge? Did he tell you himself?

Mr. MURPHY. I believe over the course of the years we may have had a discussion or two about it, but basically from the older agents in the office who had had prior experiences with Mr. Dredge and his associates.

The CHAIRMAN. Counsel, we are halfway through a vote on the Senate floor, and I think we'll need to recess at this time. I would urge committee members, there are evidently two votes back to back, the one that we are now engaged in and another.

If committee members could vote on both and then return as soon as possible, we'll continue at that time.

[Recess.]

The CHAIRMAN. The Committee will be in order.

I would like to just go back on the record long enough to indicate we have had difficulty getting Senators back from the floor in time to begin this again before the scheduled recess at 12 o'clock. I think it would help everybody for us to just go ahead and acknowledge that we don't have the necessary quorum here and that we will reconvene at 1:30.

[Whereupon, the committee adjourned, to reconvene at 12:30 p.m., the same day.]

AFTERNOON SESSION

The CHAIRMAN. The committee will reconvene.

Ms. Williams, would you continue with your cross-examination, please?

Ms. WILLIAMS. Mr. Murphy, let me show you what has been marked Respondent's 19.

Senator RUDMAN. Excuse me. Mr. Chairman, before Ms. Williams proceeds?

The CHAIRMAN. Yes. Senator Rudman.

Senator RUDMAN. Mr. Chairman, I read a copy of this indictment during the noon hour. I had my staff look it through also. I wonder if Ms. Williams has had a chance to look at it during the noon hour.

Ms. WILLIAMS. I am addressing the telex now.

Senator RUDMAN. I am talking about the indictment.

Ms. WILLIAMS. Yes. I have had a chance to look at the indictment.

Senator RUDMAN. I wonder, Ms. Williams, if you might like to comment on some of the questions you asked as to what you stated to this witness was in the indictment regarding various charges, which I do not find.

Ms. WILLIAMS. In the telex of July 30, 1981, Mr. Murphy had a conversation with the prosecutor prosecuting the case of William Dredge in Baltimore, Maryland, wherein she described to him——

Mr. BRYANT. Your Honor, we object to any testimony by this witness even if it is in response to a question from the panel.

The CHAIRMAN. The objection will be overruled. The counsel has been asked a question by a committee member. She can certainly respond to the question.

Mr. BRYANT. I would urge the committee to be sure that her response is based upon testimony that is already in.

The CHAIRMAN. The objection is overruled. The counsel can respond to the question asked by a committee member.

Ms. WILLIAMS. As I was saying, the telex represents the contents of the conversation had between Mr. Murphy and the prosecutor prosecuting the case of Dredge in Baltimore, Maryland, and it contains what she told him that Dredge had been indicted for and what he was facing. And that is what I wanted to question Mr. Murphy on.

I recognize that there are some differences between what she told Murphy and what the actual indictment does state. But she told him this, and he proceeded based on this particular information at that time, which was subsequent to the date of the indictment itself.

Senator RUDMAN. Well, I would just ask counsel, am I incorrect that in your question this morning—and if I am, I stand corrected, and I will then read the record later. Am I incorrect that in your question to this witness you asked him or you stated to him that murder and other things were in the indictment? Am I incorrect.

Ms. WILLIAMS. I do not know. But——

Senator RUDMAN. I do not think I am, Ms. Williams. And let me just say that, you know, I hope we can proceed briskly. We want to give everyone a fair hearing. But in my background in the law, it is incumbent upon counsel when reading from documents—unless we are going to have to stop and read every document you referred to—that you be very careful in your characterization of documents that are in evidence not to mis-state them. I am sure you did not do it intentionally. I am not suggesting that for a moment. I am simply asking that if you check the record at the end of today's proceeding, I think you will find that your question described the indictment as containing those things. That is decidedly incorrect. I assumed it did contain those things until I read it afterwards.

I am just asking you to be extraordinarily careful in representing the contents of documents in evidence to this panel. And I wish you would proceed.

Ms. WILLIAMS. All right.

Agent Murphy, may I again show you Respondent's Exhibit 19 and ask you if you recognize it.

Mr. MURPHY. Yes, ma'am. It is a xerox copy of a teletype that I prepared approximately July 30, 1981.

Ms. WILLIAMS. Thank you. I would like to move——

Mr. BRYANT. May I see it?

Ms. WILLIAMS. Of course you can.

I would like to move Respondent's 19 into evidence.

The CHAIRMAN. Is there objection to the admission of this exhibit?

Mr. BRYANT. Just one moment.

[Pause.]

Mr. BRYANT. We have no objection.

The CHAIRMAN. The exhibit will be admitted.

[The document referred to was marked Respondent's Exhibit No. 19 and was received in evidence.]

Ms. WILLIAMS. Agent Murphy, in this telex of July 30, 1981, it reads that you had a conversation held with the Assistant State Attorney in Baltimore who was handling the prosecution of Dredge on a narcotics matter, and the Assistant State Attorney in Baltimore advised that their good case against Dredge included a seven-count indictment charging Dredge with conspiracy, several counts of participation, and a count of violating the Travel Act. He was advised that Dredge delivered all the quaaludes, 25,000, in each of four deliveries, and received most of the moneys involved.

Also, you were advised by this prosecutor that there is hard evidence involving Dredge with a conspiracy to kill one witness and bribe another in the matter.

Did you have that conversation with the Assistant State Attorney of Baltimore in this matter?

Mr. MURPHY. The Assistant United States Attorney, an individual by the name of Mr. Steve Allen, I recall speaking with him, yes, ma'am.

Ms. WILLIAMS. Was there a correction made at some point later regarding what you were told on July 31, 1981 by the Assistant United States Attorney and the actual indictment? Did that ever get straightened out?

Mr. MURPHY. You will have to repeat the question or ask it differently. I do not understand what you are saying.

Ms. WILLIAMS. I am sorry.

Mr. MURPHY. Are you referring to the information regarding the possible murder or bribery of a witness? Is that the——

Ms. WILLIAMS. Do you know whether or not Dredge was facing possible murder in the indictment that was filed against him in Baltimore?

Mr. MURPHY. He was not charged with that, I do not believe, when he was indicted on May 10th or 11th, after looking at that teletype and having you refresh my recollection.

Ms. WILLIAMS. Do you know whether or not the indictment that was filed against him in Baltimore had four counts of narcotics violations, including 25,000 methaquaaludes?

Mr. MURPHY. I had never read that indictment, but I was advised by Mr. Allen back in that time period as to what Mr. Dredge was looking at.

Ms. WILLIAMS. You never read the indictment?

Mr. MURPHY. No, ma'am.

Ms. WILLIAMS. Then were you proceeding pursuant to what you were told by the United States Attorney?

Mr. MURPHY. And what he was discussing with Mr. Weingarten, the Public Integrity Section attorney, and conversations I was having with basically both those people.

Ms. WILLIAMS. Thank you.

Now, we were talking about Mr. Dredge and your belief in him, his veracity, as far as this particular case is concerned.

Mr. MURPHY. Yes, ma'am.

Ms. WILLIAMS. To your knowledge, did Mr. Dredge ever tell you anything regarding this case which you subsequently found not to be accurate?

Mr. **Murphy**. Not that I can recall, no, ma'am.

He advised on certain times of certain information. I think perhaps an amount was revised on occasion, but nothing that I would have considered substantial.

Ms. **Williams**. Do you recall what Mr. Dredge told you in terms of how long his relationship with William Borders was, had endured?

Mr. **Murphy**. When we initially talked, he dated his relationship with Mr. Borders to the early spring of 1981.

Ms. **Williams**. Thank you.

Mr. Murphy, would you take a look at Respondent's Exhibit 10, please?

Mr. **Murphy**. Yes, ma'am.

Ms. **Williams**. Do you recognize that?

Mr. **Murphy**. Yes, ma'am. It is a teletype prepared by me approximately September——

Mr. **Baron**. Excuse me. Counsel, could we have a copy of that, please?

The **Chairman**. Yes. Would a copy be delivered to House counsel so they could review that?

Ms. **Williams**. Yes. And the copy should be here in just a second. It is on its way up.

[Pause.]

Ms. **Williams**. I would like to move into evidence Respondent's Exhibit 10.

The **Chairman**. I was not clear. Had the witness completed his identification of this document as to what it was? Could the witness restate what this document is?

Mr. **Murphy**. It appeared to be a xerox copy of a teletype that I prepared on September 4, 1981, I believe it was.

The **Chairman**. Is there objection to its introduction?

Mr. **Bryant**. No objection.

The **Chairman**. What is the number on this exhibit?

Ms. **Williams**. Ten.

The **Chairman**. This is Respondent Exhibit 10. It will be admitted.

[The document referred to was marked Respondent's Exhibit No. 10 and was received in evidence.]

Ms. **Williams**. Let me direct your attention, Agent Murphy, to Page 7 of the document under the title "Cooperating Asset." Is it not true that the document reads—by the way, the Cooperating Asset is Mr. Dredge; is that correct?

Mr. **Murphy**. Yes, ma'am. That is correct.

Ms. **Williams**. And the document does read,

> Though Cooperating Asset in captioned matter has a criminal history dating to 1943, the Asset is 53 years old; the Asset has dealt with Borders for a number of years and has his confidence.

Mr. **Murphy**. Yes, ma'am. It reads that way.

Ms. **Williams**. Thank you.

Mr. Murphy, do you have any knowledge regarding a meeting that Mr. Dredge had in the presence of or in the company of Alcee Hastings and William Borders on July 28, 1981?

Mr. **Murphy**. What date was that again, ma'am?

Ms. **Williams**. July 28, 1981.

Mr. **Murphy**. No, ma'am.

Ms. **Williams**. The House managers now have their copies, and I believe that everybody does.

The **Chairman**. Do House managers have copies of these defense exhibits that are going to be offered?

Mr. **Bryant**. Yes.

Ms. **Williams**. Would you identify Respondent's Exhibit 11, please?

Mr. **Murphy**. Yes, ma'am. It is a xerox copy dated July 28, 1981, of a memo written by John Owens, a special attorney with the Miami Strike Force.

Ms. **Williams**. And have you had any conversations with John Owens regarding Mr. Dredge and this investigation?

Mr. **Murphy**. Yes, ma'am.

Ms. **Williams**. All right. I would move in Respondent's Exhibit 11.

The **Chairman**. Is there objection to the admission of Respondent's Exhibit 11?

Mr. **Bryant**. May we have just a moment, Mr. Chairman?

[Pause.]

Mr. **Bryant**. Mr. Chairman, as we understood the respondent's counsel, this memo relates to something about a meeting between Judge Hastings and Mr. Borders on the 28th. In an examination of the memorandum, we find no reference to such a meeting. Therefore, our objection would be on the basis of lack of any relevance to this case.

The **Chairman**. Counsel, could you explain your position as to the relevance of the exhibit?

Ms. **Williams**. Yes. In the exhibit, there is some discussion regarding what Dredge told Mike Owens regarding meeting with Judge Hastings and William Borders in July 1981.

Mr. **Bryant**. Can she refer to a specific page with regard to July 28th?

Ms. **Williams**. Yes. Page 4, bottom of the paragraph, last paragraph. If I may explain further?

The **Chairman**. Please do.

Ms. **Williams**. In this particular document, Dredge told the United States Attorney that he had direct personal knowledge regarding a bribery attempt against Trafficante in that one weekend he had been present at a meeting, and statements had been made which confirmed active participation in a bribery scheme with Trafficante.

The **Chairman**. The exhibit will be introduced, will be admitted. Let me just interpose a moment to advise counsel that all of the exhibits that the House has offered into evidence had been made available to the committee, and those are exhibits that we have for committee members. We do not have the ones which you are now offering into evidence.

Ms. **Stone**. They just arrived.

The **Chairman**. Oh, we just got one. Okay. All right. I wanted to be sure you understood that we did not have in front of us the items you were referring to.

If you would, go ahead. The exhibit will be admitted.

[The document referred to was marked Respondent's Exhibit No. 11 and was received in evidence.]

Mr. **Bryant**. Mr. Chairman, the House at this time will ask for a recess in order that we might cast our vote. We are on the second bells of a vote in the House.

The **Chairman**. Let me ask Representative Bryant, is it possible that your counsel could continue to take the position for the House?

Senator **Durenberger**. Mr. Chairman, we have a vote, too.

The **Chairman**. We have the happy coincidence of both the House and Senate having votes right now. We will recess for 15 minutes and return. But in the future, I would hope we could get House counsel to stand in at some of these.

Mr. **Bryant**. Mr. Chairman, it may be we will want to take more time to discuss this, but the House managers will strongly urge the committee not to put us to that choice. We have invested an enormous amount of time in the preparation of this case, and we intend to present it as the Constitution requires. And we would not like to be put to the choice of having to miss votes in order to do what we have prepared to do, as I did yesterday.

The **Chairman**. We will not cross that bridge right now. We will recess for 15 minutes.

[Recess.]

The **Chairman**. The committee will reconvene.

We would propose to go forward again as one of the House managers and House counsel are here. Is there any objection on their part to us going forward with the cross-examination at this time?

Mr. **Synar**. Mr. Chairman, we do not want to try to obstruct in any way. But Mr. Bryant will be in charge of redirect, and it would be improper for us to begin until he got back because then he would not be able to hear the whole thing. If the committee could just be a little bit indulgent. I was on the floor when the vote began and he ran over and back. He should be here within literally two to three minutes. If it would be possible.

The **Chairman**. Counsel, I do not wish to cause any undue inconvenience, but I do not know that it is reasonable for us to delay until a particular House manager returns. I think that if one House manager is here and counsel is here, I think clearly we ought to be able to go forward, particularly when it is a question of being present while cross-examination occurs. Surely yourself and counsel can take notes on any items that need redirect examination.

Mr. **Synar**. Mr. Chairman, we do lodge an objection because, as you know, the House managers have divided up the witnesses, and Mr. Murphy is Mr. Bryant's witness. And we think it would only be fair to let him hear all the cross-examination in order to make his redirect correct. But we will defer to the Chair.

The **Chairman**. Well, we have a quorum, and we do not know when the next vote is going to be. So I think we need to go ahead and press forward; otherwise, we will wind up giving up the few valuable moments we have.

[Pause.]

The **Chairman**. Out of deference to the House, we will wait until Mr. Bryant arrives this time, but in the future I am going to go ahead and go forward when there is one House manager here and counsel.

Let me also just say that I think on cross-examination, at least, when the House is not engaged in its direct examination, I do think it is a reasonable procedure for us to go forward when counsel for the House is here. I can understand the desire by House managers to conduct the direct examination that they have planned on, but we will revisit that when we take our next break.

Counsel, would you go ahead with your cross-examination?

Ms. **Williams**. Yes, thank you.

The first thing I would like to do, Mr. Murphy, is say that that weekend was the weekend of July 18th.

Now, we were talking about Exhibit No. 11, of which you have a copy there; is that correct?

Mr. **Murphy**. This one is No. 10.

Ms. **Williams**. Let me ask you—your copy has disappeared. Mr. Murphy——

Senator **Rudman**. Excuse me. Would the Chair inquire? What exhibit are we talking about because we would like to look at them, too? I heard the witness say 10 and counsel say 11. I do not care which it is; I just want to know what it is.

Ms. **Williams**. The last exhibit that was admitted was Exhibit No. 11.

Senator **Rudman**. 11?

Ms. **Williams**. Yes. And here is your copy, sir.

Mr. **Murphy**. Thank you.

The **Chairman**. Am I correct, counsel, that this is the memorandum, U.S. Government memorandum dated July 28th?

Ms. **Williams**. It is the John M. Owen memorandum dated July 28th. That is correct.

The **Chairman**. Fine. Proceed.

Ms. **Williams**. You did say, Agent Murphy, that you did have discussion with Mr. Owen regarding whatever he knew, learned from Dredge concerning this case; is that correct?

Mr. **Murphy**. Yes, ma'am. He and Martha Rogers.

Ms. **Williams**. All right. And I suppose in that communication Mr. Owen told you what Dredge told him regarding a meeting that he had had with Judge Hastings and William Borders; is that correct?

Mr. **Murphy**. He related to myself the information that ultimately ended up in this memo. Yes, ma'am.

Ms. **Williams**. And what ultimately ended up in the memorandum is that in this regard Dredge stated that on Saturday of the previous weekend, July 18th, Hastings and Borders met in Washington, DC; Dredge implied that he had been present at the meeting; and that statements had been made which confirmed the active participation of Hastings in the bribery scheme. Is that correct? I am reading from Page 4, the bottom of the page.

Mr. **Murphy**. May I read it, please?

Ms. **Williams**. Sure.

[Pause.]

Mr. **Murphy**. I have read the paragraph now.

Ms. **Williams**. And did Dredge tell you that he had participated in or been present at and overheard these type conversations on the weekend of July 28th?

Mr. **Murphy**. No, ma'am, he did not.

Ms. **Williams**. Thank you.

The weekend was July 18th. I made that correction, Agent Murphy. Is that correct?

Mr. **Murphy**. Yes, ma'am.

Ms. **Williams**. OK. Thank you.

Let me have you identify Respondent's Exhibit 12.

Mr. **Murphy**. I believe it is the same teletype as Exhibit 10.

Ms. **Williams**. All right. Dated September 4, 1981.

Let me direct your attention, then, in that same exhibit, Mr. Murphy, to that portion of the telex that designates Alcee Hastings as the subject of the Apple Eye investigation back in September of 1981?

Mr. **Murphy**. Which page are you on, ma'am?

Ms. **Williams**. I am on Page 2, under No. 2, "Subjects." It reads in D,

> Alcee Lamar Hastings, date of birth September 5, 1936; employment, United States District Court judge, Southern District of Florida, for approximately two years.

That provision is found under "Subject," is it not?

Mr. **Murphy**. Yes, ma'am.

Ms. **Williams**. So back on September 4, 1981, Alcee Hastings had been designated a subject of the investigation; is that correct?

Mr. **Murphy**. Yes, ma'am.

Ms. **Williams**. And the attorney who would be prosecuting this case was also designated in this memorandum. Let me direct your attention to Page 7, VII, where it says "Departmental Attorney Opinion," and there you learned that Reid Weingarten was the attorney from the Public Integrity Section of the Department of Justice, and that he was going to be the attorney prosecuting this case; is that correct?

Mr. **Murphy**. I knew that from July 22nd.

Ms. **Williams**. All right. So all along and up to and including September 4, 1981, Reid Weingarten was apprised of all that had occurred in this investigation; is that correct?

Mr. **Murphy**. He was kept advised as best I was able. I do not know if I told him everything.

Ms. **Williams**. He concurred with the proposal, with the objective, and with the legality of what had been proposed in this investigation; is that correct?

Mr. **Murphy**. Yes, ma'am.

Ms. **Williams**. And he at that time indicated that he was dedicated to the prosecution of the subjects designated in this telex; is that correct?

Mr. **Murphy**. At what time? September——

Ms. **Williams**. September 4, 1981.

Mr. **Murphy**. It was my impression from the outset that he would be trial attorney in the matter, if it ever got to trial.

Ms. **Williams**. Was it your impression from the outset that he was dedicated to the prosecution of these subjects?

Mr. MURPHY. Maybe we are having a problem with your using the word "dedicated," but he was assigned to the case by the Department of Justice Public Integrity Section, just as I was assigned as the case agent by the FBI.

Ms. WILLIAMS. Fine. Does the telex read that "He is dedicated to the prosecution of the subjects developed"?

Mr. MURPHY. That is the way the teletype reads. Yes, ma'am.

Ms. WILLIAMS. Fine. Thank you.

Mr. MURPHY. You are welcome.

Ms. WILLIAMS. Now, did you have some discussion with Mr. Dredge regarding an alleged bribery attempt that involved Santos Trafficante?

Mr. MURPHY. Yes, ma'am.

Ms. WILLIAMS. And how much was the amount of that bribery attempt, allegedly? What did Mr. Dredge tell you?

Mr. MURPHY. I would have to refresh my recollection at this point in time, but my recollection is that it included Mr. Trafficante and two other individuals, and that the amount talked about initially was I believe a million dollars, without refreshing my recollection, and it was later revised by Mr. Dredge to, I assume—my recollection is like a half a million perhaps or $300,000.

Ms. WILLIAMS. Your voice went lower, and I lost the——

Mr. MURPHY. My recollection is that later in the summer he thought that the amount had been lower than what he originally had given us.

Ms. WILLIAMS. To $300,000?

Mr. MURPHY. Without refreshing my recollection, I do not recall that right now.

Ms. WILLIAMS. You would not be sure? All right.

What is the basis of the change in the amount, do you know?

Mr. MURPHY. I believe the way it was reported to me by Mr. Dredge was that he had picked up the information from Mr. Borders or someone in Washington.

Ms. WILLIAMS. I see. Now, would you characterize Dredge as a cooperative confidential informant?

Mr. MURPHY. Would you explain that?

Ms. WILLIAMS. Did he follow the suggestions of the Government and follow—did he do what he was required to do or asked to do by the Government when he was asked to do it?

Mr. MURPHY. Are you referring to a specific point in time?

Ms. WILLIAMS. Did he make any demands on the Government?

Mr. MURPHY. The demands that he was making had to do with his plea agreement in Baltimore, but that was a matter that would be handled properly by the Public Integrity Section; Mr. Dredge, if he decided to incorporate his attorney into the dealings; and the prosecuting attorney, Mr. Allen, in Baltimore.

Ms. WILLIAMS. Let me hand you 15, Respondent's 15, and ask you to identify it, please. Is that a telex dated August 26, 1981?

Mr. MURPHY. Yes, ma'am, it is.

Ms. WILLIAMS. And it bears your signature, doesn't it?

Mr. MURPHY. It has got my initials and my name down there.

Ms. WILLIAMS. Good.

I would like to move, then, Respondent's 15, please.

The CHAIRMAN. Is there objection to the admission of Respondent's Exhibit 15?

Mr. BRYANT. Mr. Chairman, we would like to ask her to state the relevance before we are required to offer our objections.

The CHAIRMAN. Counsel, could you state the purpose for which the exhibit is being offered or the relevance of it?

Ms. WILLIAMS. The exhibit is being offered to show that Dredge told the Government what he would do, what he wouldn't do, and he did not do what they wanted him to do.

The CHAIRMAN. Is there still objection, or is House——

Mr. BRYANT. No objection.

The CHAIRMAN. The exhibit will be admitted.

[The document referred to was marked Respondent's Exhibit No. 15 was marked and was received in evidence.]

Ms. WILLIAMS. Let me direct your attention to paragraph 3 of Respondent's 15, Agent Murphy, which reads that "Dredge advised"—was he advising you?

Mr. MURPHY. Yes, ma'am, he was.

Ms. WILLIAMS [continuing]. "That he was not willing to record any conversations or testify in the captioned matter," which is Apple Eye, is that correct?

Mr. MURPHY. That's correct.

Ms. WILLIAMS [reading]:

> Or he would not participate in the bribery solicitation involving the Romano brothers. He advised that if he were ever to be subpoenaed to a Federal Grand Jury or trial in either matter, that he would take the Fifth and accept the consequences.

That is what he was advising at that point in time, yes, ma'am.

Ms. WILLIAMS. Did that present any problems for the Government at all?

Mr. MURPHY. Certainly.

Ms. WILLIAMS. Was William Dredge a confidential informant?

Mr. MURPHY. No, ma'am.

Ms. WILLIAMS. What do you call him? What did you call him?

Mr. MURPHY. He was a cooperating witness who was supplying information voluntarily in this matter.

Ms. WILLIAMS. And his motives for supplying that information, you learned to be what?

Mr. MURPHY. Basically that he had charges pending against him in Baltimore and he wanted a deal on those charges.

Ms. WILLIAMS. Did you ever learn of any other motive that he had for participating in——

Mr. MURPHY. He advised me at the outset that a second reason that he had for coming forward was that he basically didn't feel that it was right that a United States District Court judge would be involved in this type of scheme.

Ms. WILLIAMS. And when did he advise you that he didn't feel that it was right that a judge would be involved in a scheme, how early on was that?

Mr. MURPHY. The first time we interviewed him.

Ms. WILLIAMS. Mr. Murphy, initially, when Dredge came in as a cooperating witness into this undercover investigation, the Government wanted him to do any number of things, is that correct?

Mr. **Murphy**. We certainly had our desires as to what we would have liked him to have done, but we couldn't force him to do anything.

Ms. **Williams**. Let me direct your attention to Respondent's 17 and ask you to identify it. Is that a telex, dated July 23, 1981?

Mr. **Murphy**. Yes, ma'am, it is. It is kind of poor quality at the bottom there.

Ms. **Williams**. I understand that, but you do recognize your signature at the bottom of this, is that correct?

Mr. **Murphy**. I recognize my name down there. It is not my signature.

Ms. **Williams**. I would move, then, Respondent's 17.

The **Chairman**. Is there objection to the admission of Respondent's Exhibit 17?

Mr. **Bryant**. Mr. Chairman, again, before it's offered into evidence, we would like to have a showing of relevance.

The **Chairman**. Would counsel state to the committee the purpose for which the exhibit is being offered, the relevance of it?

Ms. **Williams**. Yes, I would be happy to. The exhibit is being offered to show that Dredge was running this show, and not the Government. The exhibit that is being admitted sets out all of the requirements and desires of the Government as it pertains to how it would have preferred that Dredge participate in these proceedings, and the next exhibit shows exactly what did occur, and there is a great big difference, and that's the relevance of the document.

Mr. **Bryant**. No objection.

The **Chairman**. The document will be admitted into evidence.

[The document referred to was marked Respondent's Exhibit No. 17 and was received in evidence.]

Ms. **Williams**. Now, Exhibit 17, can you read that at all, Mr. Murphy?

Mr. **Murphy**. I would probably be able to make it out, yes, ma'am.

Ms. **Williams**. Okay. Let me direct your attention to the second page of the exhibit and——

Mr. **Murphy**. Page 6?

Ms. **Williams**. OK. Just one second. Did I give you more than one copy there?

All right, let me ask you to direct your attention, right, to page 6 of the memo, and——

Mr. **Murphy**. Yes, ma'am.

Ms. **Williams** [continuing]. Ask you what it is that the Government wanted Dredge to do as pertains in this investigation?

Mr. **Murphy**. Well, this is a list that——

Ms. **Williams**. Yes, go ahead. There is a list of items there, isn't there?

Mr. **Murphy**. Yes, ma'am.

Ms. **Williams**. Can you read them?

Mr. **Murphy**. I'm going to try, but the quality of this one is kind of tough.

Ms. **Williams**. I understand.

Mr. **Murphy**. These basically are requirements that Mr. Dredge told us that he would be agreeable to complying with at the first interview.

Ms. **Williams**. Oh, he did at some point say that he would agree to those provisions?

Mr. **Murphy**. At that stage, yes, ma'am, he was agreeable to the items that are listed.

Ms. **Williams**. And the final stage, how many of those items was he agreeable to carrying through?

Mr. **Murphy**. I would have to read all of them, but——

Ms. **Williams**. Can you read them for us?

Mr. **Murphy**. Certainly. I'm really having difficulty with that very last line on item number 1, where it should start out, I can't make that out at all.

Ms. **Williams**. Maybe I can help you. By the way, these documents were provided to me by the House. Let's start with number 2, since number 1 reads so badly.

Mr. **Murphy**. Number 2, "Dredge agrees to testify against William Borders, Jr. in this matter."

Ms. **Williams**. Did he continue to agree to testify against William Borders in this matter?

Mr. **Murphy**. No, ma'am.

Ms. **Williams**. All right.

Mr. **Murphy**. Number 3, "Dredge agrees to fully cooperate with special agents of the FBI in this matter."

Ms. **Williams**. Did he fully cooperate with special agents in this matter?

Mr. **Murphy**. As far as I'm concerned, yes, ma'am.

Ms. **Williams**. Well, let's explore that.

Mr. **Murphy**. Pardon me?

Ms. **Williams**. I said let's explore that, and I'll have my copy.

Did you not at one time ask Dredge to wear a recording device and make recordings in this bribery scheme?

Mr. **Murphy**. We would have preferred that for our case, yes, ma'am.

Ms. **Williams**. Did he agree to do so?

Mr. **Murphy**. Initially, I believe he agreed to, and then he decided, after a period of time, that he did not want to do that.

Ms. **Williams**. So, he did not fully cooperate with the special agents, did he?

Mr. **Murphy**. He cooperated——

Ms. **Williams**. In that regard?

Mr. **Murphy**. He changed his mind, is what he did, and he was entitled to do that.

Ms. **Williams**. I see. Did he agree to be polygraphed?

Mr. **Murphy**. Yes, ma'am.

Ms. **Williams**. And was he polygraphed?

Mr. **Murphy**. No, ma'am.

Ms. **Williams**. He changed his mind?

Mr. **Murphy**. I'm not sure on that particular point whether that was the reason or not.

Ms. **Williams**. Now, in exchange for his cooperation there, the Government, the Justice Department would agree to dismiss the pending charges currently outstanding against him. The Government did not dismiss the pending charges, all of them, did it?

Mr. **Murphy**. No, ma'am.

Ms. **Williams**. Is that in any way related to his failure to fully cooperate in this undercover scheme?

Mr. **Murphy**. Would you repeat that, please?

Ms. **Williams**. Was that in any way related to his failure to fully cooperate in this undercover scheme?

Mr. **Murphy**. You will have to ask him that question. I don't know.

Ms. **Williams**. You don't know, do you?

Mr. **Murphy**. No.

Ms. **Williams**. To make a long story short, though, the way this investigation shaped up, originally is not the way it ended, is it?

Mr. **Murphy**. Like most investigations, no, ma'am.

Ms. **Williams**. Like most investigations? Thank you.

Mr. **Murphy**. Your investigation is a flexible situation and you have to adjust.

Ms. **Williams**. All right.

Agent Murphy, you were at the trial in 1983, weren't you?

Mr. **Murphy**. In Miami, yes, ma'am.

Ms. **Williams**. And you testified in that trial?

Mr. **Murphy**. Yes, I did.

Ms. **Williams**. As a matter of fact, you were around every day of that trial, weren't you?

Mr. **Murphy**. Yes, ma'am, every day.

Ms. **Williams**. As case agent?

Mr. **Murphy**. As the case agent. I was excluded from the courtroom.

Ms. **Williams**. Yes, but in that regard, you knew what was going on, though, right?

Mr. **Murphy**. I was apprised at the end of the day, other than my own testimony, as to what had occurred during the day, yes, ma'am.

Ms. **Williams**. All right. And you know that one of the issues at that trial was whether or not anybody else knew the contents of the order of October 5th before it issued, is that correct?

Mr. **Murphy**. That would certainly be a pertinent point, yes, ma'am.

Ms. **Williams**. I would like to show you Exhibit 22 and ask you to identify it, please? Is that a telex dated October 8, 1981?

Mr. **Murphy**. Yes, ma'am, it is.

Ms. **Williams**. And did you write this telex?

Mr. **Murphy**. Yes, I did.

Ms. **Williams**. All right.

I would like to move into evidence Respondent's 22.

The **Chairman**. Is there objection?

Mr. **Bryant**. The same objection would be offered once again. We have had no showing as to relevance.

The **Chairman**. Would counsel state the purpose for which it's offered, the relevancy of the document?

Ms. **Williams**. The purpose for which the document is offered is to show that there was information that persons knew the contents of the October 5 order prior to its issuing, and that Mr. Murphy knew that.

The **Chairman**. Is there objection to its admission?

Mr. **Bryant**. No objection.

The **Chairman**. It will be admitted.

[The document referred to was marked Respondent's Exhibit No. 22 and was received in evidence.]

Ms. **Williams**. Mr. Murphy——

Mr. **Murphy**. Yes, ma'am?

Ms. **Williams** [continuing]. In this telex, you write, don't you, that,

> On October 7, 1981, Mike Owen, an assistant Strike Force attorney in Miami, advised you of the following conversation that he had with Judge Hastings' law clerk, Jeff Miller, in the judge's office on October 6, 1981: He observed the top page of the order and he observed that it involved *United States* v. *Frank and Thomas Romano*, and Miller related to him that he had been working on the final draft of the order all day, because the judge wanted it out by the end of the day, and that the order was going to rescind the forfeiture previously ordered by the judge regarding counts 1 and 6 of the indictment, that the monetary value—the order states that this action is being taken because of two recent Fifth Circuit Court of Appeals decisions, which stated that types of forfeitures under the RICO statute are not valid. In the order, the judge stated that he did not agree with these decisions, but that he had no choice but to rescind the forfeiture. It is noted that not all of the forfeiture was rescinded.

And Mr. Owen learned all of this from Jeff Miller prior to the order being sent out, is that correct?

Mr. **Murphy**. My recollection is that Mr. Owen said that late in the afternoon of October 6th, the day that the order was issued, and I have to assume from reading what he was advised and seen in his conversation with Mr. Miller, that it was after the order was prepared by Judge Hastings' clerk, Jeff Miller.

Ms. **Williams**. Mr. Owen indicates that Miller was working on this order, because the judge wanted it out that day, does he not?

Mr. **Murphy**. What I've written here is that Miller had been working on the final draft of the order all day, and my recollection again is, and you may have to ask Mr. Owens, but my recollection is that he learned of this information late in the afternoon of October 6th, and I'm assuming it was after Mr. Miller completed writing the——

Ms. **Williams**. You are making a lot of assumptions, aren't you?

Mr. **Murphy**. Well, I had a conversation with Mr. Owen and that's my recollection of it back then, in 1981.

Ms. **Williams**. You do remember how critical an issue it was in this case, as to whether or not there was any means by which persons learned about the contents of an order before the order was actually filed and issued out of the judge's chambers? You recall the criticality of that issue, don't you?

Mr. **Murphy**. It was an important point in this investigation.

Ms. **Williams**. And did you bring up this information during the 1983 trial? Did you apprise defense, did you apprise the judge?

Mr. **Murphy**. Did I? No, ma'am.

Ms. **Williams**. Did you apprise the prosecutor?

Mr. **Murphy**. The prosecutor was aware of all of this. He spoke to Mr. Owen about it also.

Ms. **Williams**. Reid Weingarten was aware of this?

Mr. **Murphy**. I would believe so, yes, ma'am.

Ms. **Williams**. Thank you, sir.

Now, Mr. Owen did not testify at that trial, is that correct?

Mr. **Murphy**. I don't recall.

Ms. **Williams**. Now, there were points in time when authorization to go forward with this undercover investigation were placed on hold in certain instances back in October 1981, is that correct, early October 1981, by Mr. Webster himself, is that correct?

Mr. **Murphy**. The instructions that we were receiving from headquarters was that, once we started the undercover investigation, that before we could go further in the operation, we had to see, for example, Point A or Plan A or Situation A occur, and the first step would have been to actually meet with Mr. Borders and see what he had to say. So, if that is what you mean, before we went on to Plan B or Step B, meaning offer a payment to Mr. Borders, we would have had to have the meeting first and analyze the meeting before we could go on to the next step.

Ms. **Williams**. And there was a meeting, was there not?

Mr. **Murphy**. Yes, ma'am, on September 12th.

Ms. **Williams**. Pardon me?

Mr. **Murphy**. On September 12th, yes.

Ms. **Williams**. All right. And the decision in that meeting of September 12th was what, as far as going forward, passing the money?

Mr. **Murphy**. Mr. Borders said he could accomplish certain things, and one of them was accomplished prior to the next meeting.

Ms. **Williams**. All right. Let me direct your attention to a telex dated October 8, 1981, that would be Telex No. 23.

Mr. **Baron**. Exhibit No. 23?

Ms. **Williams**. Exhibit No. 23, telex dated October 1981.

Mr. **Murphy**. 22 is dated that same date.

Ms. **Williams**. Telex No. 23, dated October 1981. Can you identify it for us?

Mr. **Murphy**. Yes, ma'am, it's a teletype from the Director to the Washington field office—excuse me, from Miami, to headquarters and to the Washington field office in this matter.

Ms. **Williams**. All right. Thank you.

I move into evidence Respondent's Exhibit 23.

The **Chairman**. In anticipation of the House objection, could you state the purpose for which you're offering the exhibit?

Ms. **Williams**. I am offering the exhibit to show the limitations placed by Mr. Webster on the ongoing undercover investigation at this point in time.

The **Chairman**. Is there objection by the House managers to the introduction of this exhibit?

Mr. **Bryant**. Just one moment, Mr. Chairman, please.

Well, without pointing to something in the memorandum which we don't see here in the telex that would seem to be relevant to what you said it is being offered for, we would object on the ground of relevance. We find nothing in it to relate to the showing that she said she wanted.

The **Chairman**. We will permit that point to be made on cross-examination, if the House persists in that view. The exhibit will be admitted.

Counsel can proceed.

[The document referred to was marked Respondent's Exhibit No. 23 and was received in evidence.]

Ms. **Williams**. Mr. Murphy——

Mr. **Murphy**. Yes, ma'am?

Ms. **Williams** [continuing]. Number 2 on page 2 of this telex reads, "He"—and the he is who, the Director of the FBI?

Mr. **Murphy**. [No response.]

Ms. **Williams**. "He stated that, even with the shows of proof you had at that time"——

Mr. **Murphy**. That's in reference to Mr. Weingarten.

Ms. **Williams**. All right: The judge could possibly justify his actions as being coincidental and/or discretionary, and let me back up and read why.

> He advised that, in addition to the two shows of proof by Judge Hastings that you had at that time, the September 16, 1981 dinner at the Fountainebleau, and the unilateral order by the judge to return a substantial portion of property to the Romano brothers within 10 days of the September 19, 1981 payment to William Borders, that additional corroborative evidence was needed for a stronger prosecutable case against Judge Hastings. And he stated that, even with those shows of proof, the judge could possibly justify his actions as being coincidental and/or discretionary.

So there were some problems, were there not, with the proof in this case, as late as September 1981, as was set out in this particular memo, is that correct?

Mr. **Murphy**. The reason that this teletype was sent up there had to do with setting out the reasons why we felt that a Title III electronic surveillance coverage would be necessary on Mr. Borders' phone. That's what Mr. Weingarten advised me, and this is what I passed on to my headquarters.

Ms. **Williams**. And what the telex says is that, "Further evidence was needed at this point," is that correct, and that is why he was making an application for ELSUR coverage?

Mr. **Murphy**. Well, it reads, "Additional corroborating evidence is needed for a stronger prosecutable case."

Ms. **Williams**. And you interpreted that to mean that there was a strong prosecutable case at that time?

Mr. **Murphy**. I'm not the prosecutor. You may want to ask him that question.

Ms. **Williams**. All right. All right. Mr. Weingarten goes on to state that, "There is a need for the ELSUR coverage, because there's no possibility for direct contact between the judge and the undercover agent," and he advised that he was going to be seeking a pen register, because he wanted stronger proof, is that correct?

Mr. **Murphy**. That would seem logical, yes, ma'am.

Ms. **Williams**. All right. Now, when was the authorization to arrest William Borders issued?

Mr. **Murphy**. We had the prosecutor right there on the scene with us, so he authorized us prior to Mr. Borders arriving that we could arrest him at that point.

Ms. **Williams**. Are you talking about the day of October 9, 1981?

Mr. **Murphy**. Yes, ma'am.

Ms. **Williams**. And on that day, the prosecutor advised that William Borders could be arrested?

Mr. **Murphy**. It was an ongoing conversation with him as to—we kept him fully apprised of everything that was developing, so he was aware and he was in agreement that that is when the arrest should take place.

Ms. **Williams**. And I believe you testified that the decision to arrest William Borders was brought about because he did not come into the room, and you were afraid for Rico, and you were afraid that you would lose the money, is that correct?

Mr. **Murphy**. We were going to arrest Mr. Borders that day at some point in time, was our plan. It just depended on when we decided to make that arrest. If he had come into the room and conversed with Mr. Rico, we would probably not have made the arrest at that point in time.

Ms. **Williams**. If he had come into the room and conversed with Mr. Rico and passed the money, and the money had passed, would you have arrested him?

Mr. **Murphy**. You are asking me a hypothetical at this stage, but if we were still under control of the money and the person to be arrested, we probably would have waited to see what was going to occur and what he advised Mr. Rico.

Ms. **Williams**. So, your testimony is there was no predetermined decision as to when Borders would be arrested?

Mr. **Murphy**. He was going to be arrested following the payoff.

Ms. **Williams**. Following the payoff, whenever that occurred?

Mr. **Murphy**. Yes, ma'am.

Ms. **Williams**. Inside the room or outside the room?

Mr. **Murphy**. At some point in time, based on what was occurring.

Ms. **Williams**. All right. And that decision was made on October 9th, essentially by Reid Weingarten, is that what you're saying?

Mr. **Murphy**. No, it was made as an ongoing decision up to that point in time. We knew when we made the final payoff to Mr. Borders, we were going to arrest him at that point.

Ms. **Williams**. Was the decision to arrest Williams Borders when the payoff was made made a month in advance of the payoff?

Mr. **Murphy**. A month in advance, we hadn't even had the first meeting.

Ms. **Williams**. Let me direct your attention to Respondent's Exhibit 24, and ask you to identify it. Is it not a telex from the Director, dated October 5, 1981?

Mr. **Murphy**. It's a teletype to FBI Miami and to the FBI office, the Washington field office, to both of them, from the Director, and it's dated October 5, 1981, yes, ma'am.

Ms. **Williams**. Thank you.

I would move in Respondent's Exhibit No. 24.

The **Chairman**. In anticipating an objection from the House, could counsel state the purpose for which it is offered?

Ms. **Williams**. We proffer that the purpose for which it is offered is to show that a decision was made on October 5, 1981, to arrest William Borders whenever the money passed.

The **Chairman**. Is there objection to that exhibit being admitted?

Mr. **Bryant**. Could you please restate that. We do not understand your offer of relevance, counsel.

The **Chairman**. Counsel, could you once again state the reason for which it is being offered?

Ms. **Williams**. To show that there was authorization from the Director of the FBI to arrest Borders upon receipt of payment, whenever that occurred.

Mr. **Bryant**. No objection.

The **Chairman**. The exhibit will be admitted.

[The document referred to was marked Respondent's Exhibit No. 24 and was received in evidence.]

Ms. **Williams**. Now, Exhibit No. 24 reads that,

> The Miami office is instructed that no payment be made to William Borders without additional recording incriminating conversation between Borders and the undercover agent implicating Judge Hastings, and without an authorization from the Department of Justice to arrest Borders upon receipt of payment.

Mr. **Murphy**. That's correct.

Ms. **Williams**. Is that correct?

Mr. **Murphy**. Yes.

Ms. **Williams**. So, didn't you know back on October 5, 1981, that you were going to arrest William Borders whenever the payment was made?

Mr. **Murphy**. Well, you may be misunderstanding this, but the FBI doesn't authorize someone's arrest. The Department of Justice, either the U.S. Attorney's Office, the Strike Force, Public Integrity Section, an attorney has to authorize someone's arrest. An FBI agent doesn't authorize it and neither does the Director.

Ms. **Williams**. All right.

Mr. **Murphy**. And at this point in time, what it says is that there are two conditions.

Ms. **Williams**. Why don't you read what it says, Mr. Murphy?

Mr. **Murphy**. All right. It says that the SAC, meaning the special agent in charge in Miami,

> Is instructed that no payment be made from the $125,000 final payment money, which is referred to above, to William Borders without, number one, additional recorded incriminating conversation between Borders and the undercover agent implicating Judge Hastings, and, number two, authorization from the Department of Justice to arrest Borders upon receipt of the payment.

Ms. **Williams**. All right.

Mr. **Murphy**. It's a decision that a Department of Justice attorney has to make. We don't make that decision.

Ms. **Williams**. All right. And in order to bring that about, what does the telex say further should be done?

Mr. **Murphy**. Would you like me to continue reading it?

Ms. **Williams**. Yes, please.

Mr. **Murphy** [reading]:

> FBI HQ

meaning headquarters

> notes that the undercover agent is to make telephone calls to William Borders in an effort to get Borders to call Judge Hastings, to request the judge to expedite signing the order returning a substantial portion of the property. Contact between Borders and Judge Hastings may not, in fact, be recorded, and payments to Borders should not be predicated upon the same. However, prior to payment and upon arrival in Miami, Borders should be placed under continued surveillance, in the hope that he can be placed in personal contact with Judge Hastings. If this meet does not occur prior to scheduled meet with the undercover agent, Borders should be paid bribe and arrested immediately. No interview of Judge Hastings should be authorized prior to exhausting efforts to have Borders' cooperation obtained, but no immunity granted in targeting Judge Hastings. Premature interview of Hastings could be unproductive. However, Judge Hastings should be interviewed only after SAC is convinced that additional efforts to obtain Borders' cooperation would be fruitless.

Ms. **Williams**. All right. So, when there was no further contact or no further incriminating—if there were no further incriminating evidence against Judge Hastings acquired and the money passed, Borders was to be arrested, is that correct?

Mr. **Murphy**. Well, keep in mind, this was written on October 5th.

Ms. **Williams**. Well, as to what this telex says on this date in time, it says Borders was to be arrested if the money passed, if there were no further incriminating evidence against Judge Hastings, and that you were supposed to make efforts to get him to cooperate against Judge Hastings, is that correct?

Mr. **Murphy**. It's a standard investigative technique, yes, ma'am.

Ms. **Williams**. Is that what happened on October 9th?

Mr. **Murphy**. Yes, ma'am.

Ms. **Williams**. Now, when Borders came to the Marriott Twin on October 9, you had the room prepared for him, is that correct?

Mr. **Murphy**. That's correct.

Ms. **Williams**. And he didn't come into the room and you arrested him for the reasons you've already testified about, is that correct?

Mr. **Murphy**. That's correct. We were losing control of the money and the situation and we decided to effect the arrest at that point.

Ms. **Williams**. And then you brought him back to that room, did you not?

Mr. **Murphy**. Yes, ma'am.

Ms. **Williams**. Did you video or record what went on in that room at that time?

Mr. **Murphy**. No, and we normally don't.

Ms. **Williams**. You mean you were attempting to get a United States District Court Judge and you had Borders in a room and you were interrogating him and you were trying to get him to cooperate in helping you get that Federal judge, and there is no videotape or no tape recording of what went on in that regard?

Mr. **Murphy**. No, ma'am.

Ms. **Williams**. Now, I believe you testified that none of that $25,000 from the payoff of September 19th was ever traced to anybody, is that correct?

Mr. **Murphy**. That's correct.

Ms. **Williams**. And when that payoff was made, were there any video or tape recorders in place to record that?

Mr. **Murphy**. We had——

Ms. **Williams**. I know about the tape recorder. What about video?

Mr. **Murphy**. You are speaking in reference to the first payoff?

Ms. **Williams**. The first payoff of $25,000.

Mr. **Murphy**. Yes, ma'am, we had a stationary video camera set up across from the locker area, which Mr. Borders did not want to come down to, and we had had a portable video operation that was malfunctioning that day and we never were able to even get it.

Ms. **Williams**. All right. So, October 9 was more or less deja vu of the first payoff, that is, you had the video in place, and on the 19th Borders did not cooperate and come to the place where the video was, so there was no video made, is that correct?

Mr. **Murphy**. Right.

Ms. **Williams**. And the same thing happened on October 9th, you had the video in place and, as you might have expected, Borders did not cooperate and did not come into the place where the video was and there is no recording, is that correct?

Mr. **Murphy**. That's correct, he never entered the room, he just talked from the doorway, and after he departed the video equipment was turned off.

Ms. **Williams**. What alternative plan did you have, seeing that you might expect that Borders would not come into the room, might not come into the room where the setup was? Did you have any alternative plan, or did you decide on the spot to arrest Borders when he did not come into the room?

Mr. **Murphy**. We decided, I would say within moments after he did not come into the room, to effect the arrest at that point in time, but we had planned to arrest him on that day subsequent to the payoff.

Ms. **Williams**. Well, how many agents were there around the Marriott at that time?

Mr. **Murphy**. I don't recall an exact number, but I would guess that in the immediate area there were probably 12 to 15.

Ms. **Williams**. And were any of them in vehicles?

Mr. **Murphy**. Several were, yes, ma'am.

Ms. **Williams**. And was there any thought to following Borders with the money?

Mr. **Murphy**. Do you mean away from that controlled room?

Ms. **Williams**. Yes.

Mr. **Murphy**. No, ma'am.

Ms. **Williams**. Well, the FBI is familiar with surveillance, right?

Mr. **Murphy**. Yes, ma'am.

Ms. **Williams**. Was that decision not to try to surveil Borders and follow him and see what happened to the money connected in any way with the other surveillances that had been conducted in this investigation earlier on?

Mr. **Murphy**. Just prior to the point in time of the arrest, the surveiling agents, unfortunately, were not able to stay with Mr. Borders from his office over to the hotel.

Ms. **Williams**. And on September 11th they were not able to stay with Judge Hastings at the Miami International Airport, is that correct?

Mr. **Murphy**. That's correct.

Ms. **Williams**. And they weren't able to stay with Borders from Washington to Miami, is that correct, on that same date?

Mr. **Murphy**. Yes, ma'am, because there are times when you conduct a surveillance that, if you make your presence known to individuals, it may tend to jeopardize or interrupt the investigation at that point.

Ms. **Williams**. But there is the ability to conduct the surveillance and follow the individual and still not let him know that you are following him, is that correct? You do do that sometimes, don't you?

Mr. **Murphy**. Fortunately, yes.

Ms. **Williams**. But not in this particular investigation, on the important times, is that correct?

Mr. **Murphy**. I would say there were several surveillances that were not made during the investigation and some were called off because it is just the way it worked out. That's life.

Ms. **Williams**. What alternative plan did you have on October 9, 1981, to determine whether or not any of that money was going to go to Borders, after you made the arrest?

Mr. **Murphy**. Go to Borders?

Ms. **Williams**. Pardon me, to Judge Hastings, after you made the arrest.

Mr. **Murphy**. Well, we were going to make the arrest, so we knew at that point in time that the money wasn't going to be—that particular money wasn't going to be allowed to go to Judge Hastings.

Ms. **Williams**. There was no contingency, no contingent plan for finding out whether or not any of that money was going to go to Judge Hastings?

Mr. **Murphy**. It all depended on whether Mr. Borders decided to cooperate or not.

Ms. **Williams**. And if he did not decide to cooperate, that would be the end of the investigation?

Mr. **Murphy**. That would be the end of that stage of it, yes, ma'am.

Ms. **Williams**. There would be a stage thereafter?

Mr. **Murphy**. Because Mr. Borders was being arrested, we would have gone in from the covert stage into an overt investigation, where we would start conducting interviews, which is what we attempted to do after the arrest.

Ms. **Williams**. But as far as determining solidly, without a question, without a doubt, whether or not Judge Hastings would receive any of the money, there was no plan in force and effect, was there?

Mr. **Murphy**. That's not a factor. You are suggesting it, but it was not realistic to us at that stage.

Ms. **Williams**. Let me change the trend of thought here for one moment.

Mr. **Murphy**. Yes, ma'am.

Ms. **Williams**. I believe earlier you expressed a very firm opinion that Santos Trafficante was a dangerous man, is that correct?

Mr. **Murphy**. I believe what I stated was that he was a documented member involved in organized crime.

Ms. **Williams**. Is he a dangerous man? Was he a dangerous man?

Mr. **Murphy**. I would think it depended on how you were dealing with him, and on what matters.

Ms. **Williams**. If an informant had tried to set Mr. Trafficante up, would you think that that informant might be in considerable danger?

Mr. **Murphy**. Yes, I'd firmly believe that, yes.

Ms. **Williams**. You firmly believe that, don't you?

Mr. **Murphy**. Yes, ma'am.

Ms. **Williams**. Are you familiar with the precautions that were taken here a couple of days ago when Mr. Dredge came in to testify?

Mr. **Murphy**. Very, yes, ma'am.

Ms. **Williams**. Do you believe that those precautions were reasonable?

Mr. MURPHY. Yes, ma'am.

Ms. WILLIAMS. And I suppose you believe that they were reasonable because he had in fact informed on Trafficante, is that correct?

Mr. MURPHY. I would say that's part of it, yes, ma'am.

Ms. WILLIAMS. And the fact that he had done so appeared in the newspaper, didn't it?

Mr. MURPHY. At different times, yes.

Ms. WILLIAMS. All right. Now, Agent Murphy, I take it that you believe that a lawyer, just like Dredge, who attempted to defraud Mr. Trafficante, might also find himself in a very dangerous situation, wouldn't you think?

Mr. MURPHY. Yes, ma'am.

Ms. WILLIAMS. OK. And if a lawyer did that, it would not be wise for him to disclose the fact that he had been running a scam on Trafficante, would it?

Mr. MURPHY. That makes sense to me, yes, ma'am.

Ms. WILLIAMS. Right. Now, probably the safest course for that lawyer would be to remain silent about the fact that he had been running a scam on Trafficante, don't you think so?

Mr. MURPHY. It depends on what the individual's motivation is. I would say it is certainly a personal decision he would have to make.

Ms. WILLIAMS. Well, if he decided to remain quiet about that fact——

Mr. MURPHY. Yes, ma'am.

Ms. WILLIAMS [continuing]. He might satisfy Trafficante and other underworld figures that he's a stand-up guy. Do you think so?

Mr. MURPHY. Are you asking for my opinion?

Ms. WILLIAMS. Yes.

Mr. MURPHY. I would say that would be one way of showing or indicating that to them, yes, ma'am.

Ms. WILLIAMS. Even eight years later, a lawyer in that predicament could reasonably believe that it would not be safe for him to come into a courtroom, to the Senate, whatever, and admit that he had run a scam on Santos Trafficante. Is that correct?

Mr. MURPHY. I believe that the individual—I guess I have to qualify this. There are other reasons that individuals don't particularly desire to cooperate, and it is because of maybe other information that they are also aware of, and that people might construe their cooperating in one matter as cooperating with other matters.

Ms. WILLIAMS. I see. But to answer my question——

Mr. MURPHY. Yes, ma'am.

Ms. WILLIAMS [continuing]. If a lawyer came into a courtroom or a Senate proceeding and announced that he had in fact run a scam on Trafficante, he would be in a dangerous situation, wouldn't he, even eight years later?

Mr. MURPHY. Mr. Trafficante is not alive at the moment.

Ms. WILLIAMS. No, but you just said that all of that precaution with Dredge was reasonable, did you not, today, 1989?

Mr. MURPHY. I said it was one of the factors, that he should be concerned about his welfare.

Ms. WILLIAMS. And is one of the factors that a lawyer in that situation should be concerned about his welfare, is that correct?

Mr. MURPHY. It depends on what other things that lawyer might have been involved in.

Ms. WILLIAMS. In both situations, it depends on what other things, is that correct?

Mr. MURPHY. That would be my opinion, yes, ma'am.

Ms. WILLIAMS. And even if a court of law or the Senate said, "I'm going to put you in jail if you don't come in here," it still might be preferable, going to jail, than the danger that he might be face if he came in and exposed what he had in fact done. Don't you agree?

Mr. MURPHY. For me, that particular case or other matters, yes, ma'am.

Ms. WILLIAMS. OK. Now, you are aware that Joseph Nesline told the FBI that he believed that Borders was running a scam on Judge Hastings, is that correct?

Mr. MURPHY. I don't recall that specifically, no, ma'am.

Ms. WILLIAMS. You are not aware of that?

Mr. MURPHY. I don't recall being told that at this point.

Ms. WILLIAMS. Didn't Dredge tell you that?

Mr. MURPHY. Didn't he tell me what?

Ms. WILLIAMS. Didn't he tell you that he believed that Borders was running a scam on Judge Hastings, and that his friend Nesline believed that Borders was running a scam on Judge Hastings?

Mr. MURPHY. At what point in time?

Ms. WILLIAMS. Any point in time.

Mr. MURPHY. I think what Mr. Dredge related to me was that he couldn't believe initially that Mr. Borders was going to be able to produce anything, but that after a period of time his decision changed.

Ms. WILLIAMS. There was some shortcomings in the investigation, the undercover Apple Eye investigation back in 1980-81, weren't there?

Mr. MURPHY. Would you repeat that, please?

Ms. WILLIAMS. Particularly as it pertains to surveillance, is that correct?

Mr. MURPHY. Would you repeat the initial question?

Ms. WILLIAMS. There were some shortcomings, from failures, from inadequacies, as it pertains to FBI surveillance during the Apple Eye investigation, is that correct?

Mr. MURPHY. There were some things that were not accomplished that would have made the case stronger, that's correct.

Ms. WILLIAMS. Or weaker, is that correct?

Mr. MURPHY. Well, if something were unaccomplished, I'm not sure how that would make it weaker—I don't know what you're saying then.

Ms. WILLIAMS. Did you know for a fact that in 1981 that Judge Hastings and Mr. Borders met on September 12, 1981—in 1981?

Mr. MURPHY. Do I know for a fact that——

Ms. WILLIAMS. Did you know? Did you know for a fact?

Mr. MURPHY [continuing]. That Judge Hastings and Mr. Borders met on September 12, 1981?

Ms. WILLIAMS. Yes.

Mr. MURPHY. I was advised by people that observed them, yes.

Ms. WILLIAMS. Say it again.

Mr. MURPHY. On September 12, 1981, I was advised by people that Mr. Borders and Judge Hastings met.

Ms. WILLIAMS. On September 12th, you were advised by what people?

Mr. MURPHY. Not on September 12th, but I was subsequently advised in the investigation that Mr. Borders and Mr. Hastings did in fact meet at the Sheraton Washington Hotel with other people.

Ms. WILLIAMS. You were advised by Judge Hastings about that, isn't that correct?

Mr. MURPHY. He was one of them, I believe, yes.

Ms. WILLIAMS. All right. But no surveillance of the FBI determined that, is that correct?

Mr. MURPHY. That's correct.

Ms. WILLIAMS. Now, on September 10th, you decided to initiate a surveillance, is that correct, on both Judge Hastings and William Borders?

Mr. MURPHY. On September 11th.

Ms. WILLIAMS. On September 11th?

Mr. MURPHY. Yes, ma'am.

Ms. WILLIAMS. And that was in view of the upcoming meeting on September 12th of Borders and the undercover agent, is that correct?

Mr. MURPHY. Yes, ma'am, that's correct.

Ms. WILLIAMS. So, you had surveillance on both Judge Hastings and William Borders on September 11th?

Mr. MURPHY. We had surveillance of Judge Hastings in the early afternoon hours——

Ms. WILLIAMS. All right.

Mr. MURPHY [continuing]. Until he arrived at the airport.

Ms. WILLIAMS. And as a result of that surveillance, you do know for a fact that Judge Hastings did go to the Miami International Airport, don't you?

Mr. MURPHY. That's correct.

Ms. WILLIAMS. And about what time did he do that?

Mr. MURPHY. My recollection was sometime around 3:00 o'clock or a little after 3:00, he arrived.

Ms. WILLIAMS. And you know for a fact that he entered the airport, don't you, because of your surveillance, is that correct?

Mr. MURPHY. He was seen parking his vehicle and heading toward the concourse area; yes, ma'am.

Ms. WILLIAMS. And you don't know, do you, where he went, what he did, who he spoke to or anything thereafter, do you, after he went through the doors at the airport? Your surveillance failed and you cannot tell us, for a fact, you couldn't tell us for a fact in 1981 what he did then, could you?

Mr. MURPHY. On that day, we did not know what he did, that's correct.

Ms. WILLIAMS. You don't know—you didn't know back in 1981 whether or not plane had been delayed?

Mr. MURPHY. What date in 1981?

Ms. WILLIAMS. September 12th—pardon me, 11th.

Mr. MURPHY. On September 11th, no, we did not know what happened to his flight plans.

Ms. WILLIAMS. All right. And on that day, you didn't know whether or not he spoke to anybody in the airport?

Mr. MURPHY. On that day, no.

Ms. WILLIAMS. In the Miami Airport. Do you know today?

Mr. MURPHY. We subsequently learned in our investigation, through toll records and subpoenaed airline tickets, how he traveled and what pay phones were used to call, or charged to his home phone.

Ms. WILLIAMS. Yes, but you still don't know today whether or not he spoke to individuals in the airport on September 11th, do you?

Mr. MURPHY. I know that there was a message pad in Mr. Borders' office that appeared to be written by Cindy Rogers that showed that Judge Hastings called.

Ms. WILLIAMS. You don't know if he met anybody in the airport on that day, do you?

Mr. MURPHY. Oh, met anybody, no.

Ms. WILLIAMS. OK. You didn't know that in 1981 and you don't know it today?

Mr. MURPHY. That's correct.

Ms. WILLIAMS. Now, did you have a log of your surveillance on September 11, 1981?

Mr. MURPHY. I don't recall that we have one for that surveillance, no, ma'am.

Ms. WILLIAMS. Is it ordinary to have surveillance logs when a surveillance has been ongoing?

Mr. MURPHY. Normally, yes.

Ms. WILLIAMS. And on September 11th, you did not know that Judge Hastings had traveled. He could have come back out of the airport, as best as you know, right?

Mr. MURPHY. The facts we were working under at that point in time was sometime around 3:00 o'clock he was seen going toward the terminal, his vehicle was parked in short-term parking, and later on that evening and the next day, when Mr. Borders was in town, his vehicle was still in short-term parking.

Ms. WILLIAMS. And you know that the vehicle was there, but you don't know whether or not the judge met someone in the airport and came back out for some time, do you?

Mr. MURPHY. As I stated before, no, ma'am.

Ms. WILLIAMS. No. Now, in 1981, you did not know for a fact whether or not Judge Hastings and William Borders met in Washington, DC, on September 11, 1981?

Mr. MURPHY. On September 11, 1981?

Ms. WILLIAMS. Yes.

Mr. MURPHY. No, we have no documentation of that fact.

Ms. WILLIAMS. You didn't know that back in 1981, and you don't know that today, in 1989, do you?

Mr. MURPHY. We have nothing to document that today, no.

Ms. WILLIAMS. On September 12, 1981, did you know where Judge Hastings was?

Mr. MURPHY. No, ma'am.

Ms. WILLIAMS. Did you know who he spoke to?

Mr. MURPHY. On that date, no, ma'am.

Ms. WILLIAMS. On September 12th, did you know where William Borders was?

Mr. MURPHY. On September 13th, we didn't have any surveillance of Mr. Borders at that point.

Ms. WILLIAMS. So, you didn't know where he was, either?

Mr. MURPHY. That's safe to say, yes.

Ms. WILLIAMS. Did you know on September 13th whether or not Judge Hastings met Hemphill Pride, in 1981?

Mr. MURPHY. Did not know at that point in time, no, ma'am.

Ms. WILLIAMS. Let me repeat my preamble. There were some shortcomings in your investigation Apple Eye back in 1981 as it pertains to surveillance, is that correct?

Mr. MURPHY. You are saying shortcomings, there were certain times when we had made conscious decisions not to surveil somebody, in fear of heating up the investigation. At other times, surveillances were not able to be successfully carried out.

Ms. WILLIAMS. When you gave Mr. Borders $25,000, do you know where Judge Hastings was at that time?

Mr. MURPHY. No, ma'am, we didn't.

Ms. WILLIAMS. Do you know whether or not, for a fact, did you know then whether not Judge Hastings and William Borders met on or about September 19, 1981?

Mr. MURPHY. Would you repeat that, please?

Ms. WILLIAMS. Did you know on September 18, 1981, whether or not there was contact between Judge Hastings and William Borders?

Mr. MURPHY. We did not observe any, no, ma'am.

Ms. WILLIAMS. You had a surveillance ongoing?

Mr. MURPHY. We had a surveillance on Mr. Borders.

Ms. WILLIAMS. Excuse me, may I have one moment, please, to speak——

The CHAIRMAN. Yes, you may take a moment.

[Pause.]

Ms. WILLIAMS. Mr. Chairman, my assistant has brought to my attention that Respondent's Exhibit 12 is an exhibit dated September 4, 1981, and it should be an exhibit dated September 24, 1981, and I reserve the right to come back and put into evidence the exhibit dated September 24, 1981.

The CHAIRMAN. I would advise counsel that there was never an offer of Exhibit No. 12, and it was never admitted into evidence. It was identified——

Ms. WILLIAMS. By the witness.

The CHAIRMAN [continuing]. By the witness as the same as Exhibit 10.

Ms. WILLIAMS. That's correct.

The CHAIRMAN. So, we have taken no action with regard to Exhibit 12. If counsel wishes to introduce some other document and offer that into evidence, we will consider that at the time.

Ms. WILLIAMS. All right. Thank you.

Mr. Murphy——

Mr. MURPHY. Yes, ma'am.

Ms. WILLIAMS [continuing]. You have testified at length here today and you have no documents, no notes, other than those submitted to you in teletypes here, and you have been very specific in terms of dates and times, always using the word "approximately," but always giving exactly the precise date and the precise time.

You have been living with this Apple Eye investigation since 1981, haven't you?

Mr. MURPHY. Yes, ma'am, I have.

Ms. WILLIAMS. And you have had occasion to think about it and to testify about it on numerous occasions, is that correct?

Mr. MURPHY. That's correct.

Ms. WILLIAMS. Would it be reasonable to say that it heavily impacts upon your profession, this Apple Eye investigation?

Mr. MURPHY. You will have to tell me what you mean by that.

Ms. WILLIAMS. Well, let me ask you something else, instead.

Mr. MURPHY. OK.

Ms. WILLIAMS. You have had occasion since 1981 to run into Judge Hastings in places outside of the Senate chambers and courtrooms, like in airports or just in the hallway, haven't you?

Mr. MURPHY. Yes, ma'am, numerous times.

Ms. WILLIAMS. And the judge has always been cordial to you, hasn't he?

Mr. MURPHY. And hopefully, likewise, I to him.

Ms. WILLIAMS. And you have been cordial to him, is that correct?

Mr. MURPHY. Hopefully, yes, ma'am.

Ms. WILLIAMS. Are you aware of any complaints from prosecutors that you work with who have appeared in the courtroom of Judge Hastings since his acquittal in 1983, who complained that he treats them unfairly in any way?

Mr. BRYANT. I object, Your Honor. That's not relevant to any issue in this case at this time. If it was relevant, it would be hearsay and it would lack any probative value.

The CHAIRMAN. The objection will be overruled. The witness can respond.

Mr. MURPHY. The only matter that I am aware of where someone was not speaking favorably of Judge Hastings had to do with one of the counts in the bill of impeachment here.

Ms. WILLIAMS. The Steve Clark allegation?

Mr. MURPHY. Yes, ma'am.

Ms. WILLIAMS. All right. Beyond that, you have not heard any complaints?

Mr. MURPHY. No, ma'am.

Ms. WILLIAMS. I have nothing further. Thank you.

The CHAIRMAN. Does that complete your cross-examination, counsel?

Ms. WILLIAMS. Yes, it does, except to come back and put in Exhibit No. 12.

The CHAIRMAN. We will recess at this point and in 15 minutes reconvene to continue with redirect examination.

[Short recess.]

The CHAIRMAN. We will reconvene at this point.

Representative Bryant, would you proceed with redirect examination, if you have redirect?

REDIRECT EXAMINATION

Mr. BRYANT. Yes, I do, Mr. Chairman.

Agent Murphy, in the course of the cross-examination conduct by Ms. Williams, she read you from Respondent's Exhibit No. 12, page

7, a phrase to the extent that Mr. Weingarten was dedicated to the prosecution of Alcee Hastings, and used the term "dedicated."

I would like to ask you at this time, does the FBI have a policy with regard to public corruption cases, that it will not go forward with them unless there is a commitment that the U.S. Attorney will dedicate the resources to the prosecution of the case, if there are facts to justify the prosecution are discovered?

Mr. MURPHY. Yes, sir, I think that is kind of standard terminology that we would use, yes.

Mr. BRYANT. Now, she mentioned another exhibit as well, in which the—I think several exhibits, in which at the top it indicated that the memorandum or the telex or the document was from the Director. I think you were shown several of those memos. I would ask you at this time, are memos that have printed upon them "From the Director," in fact from the Director, or are they simply from FBI Headquarters?

Mr. MURPHY. Standard procedure would be that the heading would carry "From the Director," but more likely than not, the communication would have been written by a Bureau supervisor who would be handling the matter back at headquarters.

Mr. BRYANT. Finally, she raised—not finally, but additionally, she raised questions with regard to the fact that, in the course of this investigation, a number of people were lost while you were attempting to surveil them, while your team was attempting to surveil them. I would like to ask you if, in conducting a surveillance, do you often run the risk of losing the subject?

Mr. MURPHY. Yes, sir, it's just a fact of investigating a case; it can happen, and you advise and instruct the agents ahead of time that are going to do the surveillance as to whether you want any chances taken of jeopardizing the case at that point in time, because someone may make that surveillance.

Mr. BRYANT. Now, when you say "jeopardizing the case" and "someone may make that surveillance," do you mean jeopardizing the case because the subject being followed might discover that he is being followed?

Mr. MURPHY. That's it, exactly, yes, sir.

Mr. BRYANT. So, the fear of discovering that the—of having the subject discover that he is being followed would cause you to be much more likely to lose the subject in surveillance, is that correct?

Mr. MURPHY. The surveillance would have to be conducted in a much looser fashion, and that's just the way that advice would be given to those agents, and certainly you would run the risk at that point in time of not being able to stay with the individual you were trying to follow.

Mr. BRYANT. Now, in Exhibit 23, Respondent's Exhibit 23, Ms. Williams read you that Mr. Weingarten, the prosecutor, stated in that document that he needed more evidence for a stronger prosecutable case. In fact, was more evidence obtained through the wiretap for him, for that case, to make it more prosecutable?

Mr. MURPHY. I believe it was, yes, sir.

Mr. BRYANT. What was that evidence that was obtained through the wiretap?

Mr. Murphy. Well, the evidence, for example, the coded conversation on October 5th, the——

Mr. Bryant. Between who?

Mr. Murphy. Between Mr. Borders and Judge Hastings, things of that nature. That was an investigative tool that we felt supplied and resulted in positive results.

Mr. Bryant. And the wiretap also resulted in the disclosure of the calls by H. Paul Rico impersonating Frank Romano, is that correct?

Mr. Murphy. That's correct.

Mr. Bryant. And the statement by Borders that the order was going to go out, that was also discovered in the course of the wiretap, was it not?

Mr. Murphy. That's correct.

Mr. Bryant. Thank you.

Now, Agent Murphy, at the time that the FBI arrested Mr. Borders, I would like for you to tell the committee, at the time that you arrested Mr. Borders, what information did you have that Judge Hastings was involved in the Romano bribery scheme?

Mr. Murphy. At that point in time, we had the results of the Title III investigation, meaning the conversations that were intercepted, we had the information and the surveillances of the Fontainebleau Hilton Hotel, we had the order being issued——

Mr. Bryant. You mean referring to the judge's appearance on time at the Fontainebleau Hilton?

Mr. Murphy. Yes, sir.

Mr. Bryant. OK.

Mr. Murphy. We had the issuance of the order on October 6, 1981, and we had the prior—basically, that's what it amounted to, in terms of major points, at that stage.

Mr. Bryant. And did you also have the promises by William Borders that things would be done that only the judge could do?

Mr. Murphy. Yes, sir, that was part of what he promised.

Mr. Bryant. And did you also have telephone records showing contact between Borders and Hastings?

Mr. Murphy. Yes, sir, we did.

Mr. Bryant. And did you also have confirmation of the fact that the order was going to go out the following day from Mr. Borders?

Mr. Murphy. Yes, sir, that's correct.

Mr. Bryant. You also had the coded telephone conversation of October 5th——

The Chairman. Counsel, could you ask questions that are not quite as leading? This is in the nature of direct examination of this witness and it is not an appropriate time to summarize your case.

Mr. Bryant. At the time that the FBI arrested Mr. Borders, did you have in fact a coded conversation of October 5th between Judge Hastings and Mr. Borders?

Mr. Murphy. It was a conversation that we considered coded, yes, sir.

Mr. Bryant. And you also had, did you not, at the time that you arrested—I will ask you if, at the time that you arrested Mr. Borders, you also had in your possession surveillance of two clandestine meetings between Borders and Trafficante in Florida, in which Dredge said that there was to be a——

Ms. **Williams**. Objection, leading.

The **Chairman**. Could counsel—the objection is sustained. Could counsel ask the question of the witness as to what he based his opinion on or in some other way elicit the information from the witness, rather than reciting it?

Mr. **Bryant**. I withdraw the question.

Agent Murphy, are the tape recorded conversations that you testified about before this committee the totality of the recorded conversations between the undercover agent and William Borders?

Mr. **Murphy**. Yes, sir, to the best of my knowledge.

Mr. **Bryant**. Finally, I would like to ask you this: Ms. Williams put a question to you as to whether or not it would be dangerous for a lawyer to come to this committee and testify that he had run a scam on Santos Trafficante. I think that you all engaged in that dialogue about whether it would be dangerous for him to come here and say that he had run a scam on Santos Trafficante.

I would like to ask your opinion of this: Don't you think that if William Borders had run a scam on Mr. Trafficante——

Ms. **Williams**. Objection.

Mr. **Bryant** [continuing]. That Mr. Trafficante and his clients would have figured that out by now——

Ms. **Williams**. I object.

Mr. **Bryant** [continuing]. That is, Mr. Trafficante and his cohorts would have figured that out by now?

Ms. **Williams**. I object to the hypothetical, and it's misleading.

The **Chairman**. Counsel, we will sustain the objection. It is a leading question. If you could ask the witness to state his opinion on any aspect of this, certainly that would be——

Mr. **Bryant**. We would only ask, Mr. Chairman, to be held to the same standards as the respondent's attorney is held to with regard to leading questions and admissibility of evidence.

Ms. **Williams**. Excuse me.

Mr. **Bryant**. I would like to ask one other question.

Ms. **Williams**. Excuse me, I would like to respond to that.

The **Chairman**. Would you please withhold for a moment?

I believe we are holding counsel to obviously a standard of trying to avoid too much in the way of leading questions in direct examination, this is part of the direct. Obviously, in cross-examination, we permitted direct, we permitted leading questions.

Mr. **Bryant**. Your Honor, yesterday, the respondent took Neal Sonnett on as a direct presentation of their case after we had finished ours. It was their witness and we attempted to cross-examine Mr. Sonnett. We would simply like to have the same rules applied to us as are applied to the respondent.

The **Chairman**. We are trying very hard to apply the same rules; if counsel would try to follow them, we would appreciate it.

Mr. **Bryant**. Very well.

Do you know if Mr. Borders is still alive, Agent Murphy?

Mr. **Murphy**. As far as I know, he is; yes, sir.

Mr. **Bryant**. Thank you.

We have no further questions.

The **Chairman**. Is there recross-examination?

Ms. **Williams**. No recross.

EXAMINATION BY THE COMMITTEE

The **Chairman**. Mr. Murphy, I have a question or two, and then I am sure other members of the committee would also have some questions.

Mr. **Murphy**. Yes, sir.

The **Chairman**. You indicated, after you arrested Mr. Borders, that you went to his law office and executed a subpoena. Was it a search warrant?

Mr. **Murphy**. No, sir, we served a subpoena.

The **Chairman**. You served a subpoena.

Mr. **Murphy**. Calling for record to be produced at the Federal grand jury in Miami, Florida, on the following Tuesday or Wednesday.

The **Chairman**. It was a grand jury subpoena?

Mr. **Murphy**. Yes, sir, that's correct, it was not a search warrant.

The **Chairman**. One of the main issues that has been raised in this case is the question of why, if Judge Hastings was a target of this investigation, a primary target of this investigation, why the FBI and the Justice Department did not let the money run to the judge, in the sense of why they went ahead and arrested Borders at the time they did. Could you give your opinion as to that?

Mr. Sonnett yesterday testified that he felt that was a major mistake by the prosecution or by the FBI, that those pursuing this case on the prosecution side made a major error if they were in fact attempting to make a case against Judge Hastings. Would you give your opinion on that?

Mr. **Murphy**. Yes, sir, there were several factors. Number one, there did not appear to be any apparent attempt by Mr. Borders to give any of the $25,000 as it was received by him at the initial payment to Judge Hastings while he was in the Miami area. At the time, we were not aware that Judge Hastings may have been gone from there, but our initial feelings were that these two gentlemen would be sophisticated enough that the actual cash which, given both of their legal backgrounds, that they could have been aware that the serial numbers from that particular money could have been, in fact, recorded. I always believed that the money was somehow going to be laundered in some way prior to it being distributed.

Number two, we believed that our best investigative step at that point in time was when we made the final payment to Mr. Borders, that the best technique at that point in time would be to try and solicit Mr. Borders' cooperation.

And number three, on the day of the arrest, we had a controlled situation set up, i.e., the undercover agent's motel room. When Mr. Borders did not enter that controlled situation and decided to leave the area to an unknown destination, he was leaving our close control, and because we were utilizing an undercover agent who was not an active-duty agent and was not wearing a transmitter but just a recorder, taking all of those factors into consideration, that's what led us to arresting Mr. Borders when we did, and also led us to decide earlier in the week that it appeared that we were going to make that arrest and solicit Mr. Borders' cooperation.

The CHAIRMAN. So, you never expected that, once having received that second payment, Mr. Borders would take that money or otherwise meet with Judge Hastings in the near-term, you did not expect that that might occur, so you did not wait for it to occur, is that correct?

Mr. MURPHY. We did not feel that way, no, sir. We believed that they were going to be more sophisticated than just dividing up cash that could be recorded.

The CHAIRMAN. OK. In your view, why did Borders decide not to cooperate with you at the time of his arrest?

Mr. MURPHY. In my view, I believe that he considered it for a short period of time while we were in the room, and that once he asked for an attorney and we allowed him to call the attorney and the attorney arrived, I think the attorney talked him out of it, and based on the factors that I am aware of, my feeling was at the time that he believed he might have to cooperate in maybe more matters than just the one at hand.

The CHAIRMAN. Do you think that's the same reason why he has refused consistently to testify in any proceeding, including this, on the matter?

Mr. MURPHY. If you are asking for my opinion, yes, sir, that's my opinion.

The CHAIRMAN. OK.

Senator Specter?

The VICE CHAIRMAN. Thank you, Mr. Chairman.

Pursuing the questions of the chairman a little further at this point, what, if anything, did Mr. Borders say to you which led you to conclude that he declined to cooperate because he might have had to cooperate on more matters?

Mr. MURPHY. Well, I think the fact that he was a defense attorney, number one, and normally when you deal with someone, you usually ask for complete cooperation in any and all matters that an individual might be aware of.

The VICE CHAIRMAN. Agent Murphy, perhaps a better way to approach this would be, before going to any judgment on your part or opinion on your part——

Mr. MURPHY. Yes, sir.

The VICE CHAIRMAN [continuing]. Precisely what happened? You testified to it in a cursory fashion, as to the exact events after you took Mr. Borders into custody, what conversations were had with him, his attorney came to the scene——

Mr. MURPHY. Yes, sir.

The VICE CHAIRMAN [continuing]. In and out, I think those matters are of some significance, and if you could be as precise as possible as to what happened there, I think it would be important and informative.

Mr. MURPHY. OK. I recall, from reviewing the log earlier this week, the arrest log, that Mr. Borders was arrested approximately 12:40, he arrived back at the room about 12:47, and my recollection is that initially he was brought into the room, the prosecutor was there, Mr. Weingarten, myself, the arresting agents, so I would guess there were approximately half a dozen people at the motel room.

We advised Mr. Borders again what he was under arrest for, we advised him of his rights, the normal standard advice of rights that Mr. Borders, as an attorney, would be familiar with, and we——

The **VICE CHAIRMAN**. You advised him of the full *Miranda* warnings?

Mr. **MURPHY**. Yes, sir. And at that point in time, we said we are not going to ask you any questions just yet, here is what you are being arrested for, and we basically outlined the probable cause that we had to arrest him, and then we advised him that we were going to play short excerpts from the September 12th and the September 19th recorded conversations at the Miami International Airport.

The **VICE CHAIRMAN**. Why did you do that, before making an effort to obtain information from him by asking him direct questions?

Mr. **MURPHY**. Well, we advised him, you know, we were going to play those tapes, did he have a problem with that, and he said no, go ahead and play them, he wanted to hear what they were.

The **VICE CHAIRMAN**. I understand you have already testified to that, but why didn't you ask him questions?

Mr. **MURPHY**. Because he still hadn't advised whether, you know, he wanted an attorney present for any questioning.

The **VICE CHAIRMAN**. So, you advised him of his *Miranda* warnings, then you asked him for waivers and he did not give you the waivers?

Mr. **MURPHY**. He said he didn't want to answer any questions regarding the matter he was being arrested for, but he advised that he would be willing to listen to these tapes.

The **VICE CHAIRMAN**. All right, he declined to answer the questions, which was why you didn't ask him any questions.

Mr. **MURPHY**. Yes, sir, basically.

The **CHAIRMAN**. That is a signal that we are half-way through a vote on the Senate floor. Considering the time and the difficulty we have with regaining a quorum, I think we should probably recess for the day and begin again tomorrow at 9:00 a.m., and continue with committee questions of Agent Murphy at that time.

I would urge that members of the committee try to arrive here by about 5 to 9:00. We have several matters we need to discuss ourselves before we actually continue with testimony.

We will reconvene at 9:00 tomorrow morning.

[Whereupon, at 4:56 p.m., the committee adjourned, to reconvene on Thursday, July 14, 1989, at 9:00 a.m.]

IMPEACHMENT OF JUDGE ALCEE L. HASTINGS

FRIDAY, JULY 14, 1989

U.S. SENATE,
IMPEACHMENT TRIAL COMMITTEE,
Washington, DC.

The committee met, pursuant to notice, at 9:33 a.m., in Room SH-216, Hart Senate Office Building, Hon. Jeff Bingaman, chairman of the committee, presiding.

Present: Senators Bingaman, Specter, Leahy, Durenberger, Pryor, Rudman, Bryan, Bond, Kerrey, Gorton, Lieberman, and Burns.

House Managers Present: Representatives Bryant, Synar, Gekas, and Fish.

Counsel Present: Terence J. Anderson, counsel for Judge Hastings; Robert S. Catz, counsel for Judge Hastings; Alan I. Baron, special counsel, House Impeachment Committee; Janice E. Cooper, assistant special counsel; Patricia Wynn, assistant special counsel; Lori E. Fields, assistant special counsel; Michael Davidson, Senate legal counsel; Elaine Stone, counsel, Senate Impeachment Trial Committee; Mark Klugheit, counsel, Senate Impeachment Trial Committee; and Bruce McBarnette, counsel, Senate Impeachment Trial Committee.

Staff Present: Anthony Harvey, Administrator, Senate Impeachment Trial Committee; P. Casey McGannon, staff assistant, Senate Impeachment Trial Committee; and Isabel McVeigh, staff assistant, Senate Impeachment Trial Committee.

The CHAIRMAN. The committee will reconvene.

We are in the process of propounding questions from the committee to Mr. Murphy. I believe Senator Specter is in the midst of his questions.

Why don't you go ahead, Senator Specter?

TESTIMONY OF WILLIAM MURPHY (continued)

EXAMINATION BY THE COMMITTEE (CONTINUED)

The VICE CHAIRMAN. Thank you, Mr. Chairman.

Special Agent Murphy, when the panel concluded yesterday afternoon, the subject matter that I was inquiring of related to what happened specifically with Mr. Borders after he was taken into custody, and you had started to make the comments. I would sharpen the question just a bit by referring to the arrest logs which show that Mr. Borders was taken into custody at 12:53 p.m. and asked for his attorney at 1:18 p.m. So to the best of your ability to recollect, or perhaps you have some records on it, what occurred during that 25-minute interval?

Mr. MURPHY. From the time he arrived at the room, sir, until he requested to call his attorney?

The VICE CHAIRMAN. No. From the time he was taken into custody until he asked for his attorney.

Mr. MURPHY. Yes, sir. Basically, if I recall from the log, it took about seven or eight minutes to transport Mr. Borders back from the arrest scene to the hotel room.

The VICE CHAIRMAN. Well, what happens at that time? Are any questions propounded?

Mr. MURPHY. I do not know if any other agents asked him questions. I was not out at the automobile when the arrest was made. I was back at the room. So the two agents that physically arrested him, they were the ones that transported him back to the area of the room.

The VICE CHAIRMAN. Did you make any inquiry of them as to what, if anything, they said to him and he to them?

Mr. MURPHY. My recollection was that they orally advised him of his *Miranda* rights and they did not question him at all about the matter. That is my recollection.

The VICE CHAIRMAN. Why would they advise him of his rights if they were not going to ask him any questions?

Mr. MURPHY. Because it is a standard procedure. When you arrest someone, you automatically start to advise him of the *Miranda* rights.

The VICE CHAIRMAN. OK. What happened next?

Mr. MURPHY. My recollection is that he was transported back to the room by those agents who physically arrested him. And when he was brought to the room——

The VICE CHAIRMAN. That takes about seven minutes, and that brings us up to about 1:00 o'clock. What happens next? There are 18 more minutes before he asks for his attorney.

Mr. MURPHY. That is the point in time where we again talk to Mr. Borders.

The VICE CHAIRMAN. You are present at this time?

Mr. MURPHY. I am present when Mr. Borders is back at the room. Yes, sir.

The VICE CHAIRMAN. All right. You do not give him any more *Miranda* warnings. He has already had them.

Mr. MURPHY. My recollection is we probably would have advised him again because it is standard procedure, plus the prosecutor was right on the scene—Mr. Weingarten.

The VICE CHAIRMAN. Did you advise him of the *Miranda* warnings again?

Mr. MURPHY. That is my recollection, yes, sir.

The VICE CHAIRMAN. Do you have a record of that?

Mr. MURPHY. I do not recall at this time. I would imagine if we read them from our standard form that a copy of that standard form would be kept in possibly the Washington field office file.

The VICE CHAIRMAN. What happened in the balance of the 18 minutes?

Mr. MURPHY. That was the period of time when we advised him that we would like to play the tapes for him, and he said that he would be agreeable to listening to the tapes. And we played portions of the conversations from September 12th and September 19th.

The Vice Chairman. Well, now, did you ask him questions before you suggested playing the tapes? Yesterday, I believe you testified that he declined to answer your questions, which was the reason that you played the tapes.

Mr. Murphy. Well, if I said that yesterday, that probably was not correct. Our intention was to——

The Vice Chairman. I believe you said yesterday that he declined to answer the questions and asked for his attorney, which was the reason you played the tapes.

Mr. Murphy. Well, if I said that, that was wrong, yesterday. He did not request to have an attorney there until after he had listened to the tapes. We had advised him of his rights, advised him why he was being arrested, and then advised him that we had some tapes that we wanted to play for him. And we were not going to question him about the matter at that point until he had listened to them.

The Vice Chairman. So your decision was to play the tapes before you asked him any questions?

Mr. Murphy. Oh, yes, sir. We were not going to question him——

The Vice Chairman. Why did you do that? Why not ask him some questions? The initial impact is the critical time to draw an admission or to draw some response. The longer an individual, especially a trained attorney, has to ponder and collect himself, it seems to me the less likelihood there is that he is going to respond.

Mr. Murphy. Senator, I think if you were there, you would have realized that he was leaning along those lines; at least he appeared to be.

The Vice Chairman. Leaning along what lines?

Mr. Murphy. Of considering strongly the possibility of cooperating.

The Vice Chairman. Well, was that not the time to ask him, then, the questions?

Mr. Murphy. At that point in time, when we said, "Well, are you willing to cooperate and answer questions about this matter?" at that point in time after the tapes were played, he advised, "I would like to talk to an attorney first before I do that"—or "before I tell you whether I will do that."

The Vice Chairman. All right, Agent Murphy. So be it.

The logs further show that Mr. Borders and Mr. Shorter spoke privately from 1:34 to 1:42, from 1:43 to 1:44, and from 1:45 to 1:47. Now, I would not be surprised if it is hard to pinpoint what happened in the intervals, but apparently there was some response by Mr. Shorter to you or others in the FBI. Do you recall what that was?

Mr. Murphy. At that point in time, Mr. Shorter was allowed to talk for those different intervals with his client, Mr. Borders, in physical——

The Vice Chairman. But what happened in——

Mr. Murphy. That is what I was trying to get to, sir.

The Vice Chairman. OK.

Mr. MURPHY. In physical view of us at the doorway, they had a private conversation in the room, and they were allowed to do that. But at that point, from the point that Mr. Shorter arrived there, the conversations were had in terms of discussing whether Mr. Borders would be willing to cooperate or not between Mr. Shorter, the attorney for Mr. Borders, and Mr. Weingarten, the prosecutor in the case.

The VICE CHAIRMAN. So you were not a party to those conversations?

Mr. MURPHY. No, sir, other than to advise that they were ongoing at that point.

The VICE CHAIRMAN. Did you hear what Mr. Shorter and Mr. Weingarten said to one another?

Mr. MURPHY. No, sir. That would have been a matter in terms of any type of a plea cooperation or whatever they were discussing.

The VICE CHAIRMAN. Was any record made of that?

Mr. MURPHY. If Mr. Weingarten did, I do not recall what that might have been.

The VICE CHAIRMAN. All right. Because it appears here that there was an eight-minute conversation between Mr. Borders and Mr. Shorter. Then there was a break; Mr. Shorter apparently had something to say to Mr. Weingarten.

Mr. MURPHY. That is my recollection of how that flow in the different intervals——

The VICE CHAIRMAN. But you do not know what it was that Mr. Shorter had to say to Mr. Weingarten?

Mr. MURPHY. I did not listen to those conversations, but if I had to offer an opinion, I would say that they had to do with what we were there for, what everybody was in the room for. And that was seeking Mr. Borders' cooperation.

The VICE CHAIRMAN. Well, but the question is: Did Mr. Shorter suggest at that time that there might be cooperation from Mr. Borders?

Mr. MURPHY. Well, it is not my recollection that he indicated that that was going to happen, but they did have several short discussions about the matter at that point.

The VICE CHAIRMAN. All right. We can pursue it with Mr. Weingarten. You do not know anything more that happened after they had the brief conversation ending at 1:44 and then there was another break, at least for a minute, according to the logs?

Mr. MURPHY. That is correct. It seemed to me like there were two or three points in time there where Mr. Shorter and Mr. Weingarten conversed.

The VICE CHAIRMAN. Or what happened with respect to any conversation involving Mr. Shorter and Mr. Borders after 1:47 when the arrestee and his lawyer stopped talking together?

Mr. MURPHY. My recollection is that there came a point when it was decided, or advised by Mr. Borders' attorney that Mr. Borders was not going to cooperate at that point in time. So it was decided to transport Mr. Borders to the Washington Field Office to process him.

The VICE CHAIRMAN. Was there ever any statement by Mr. Shorter as to why Mr. Borders would not cooperate?

Mr. MURPHY. Not to my knowledge, no, sir.

The VICE CHAIRMAN. Special Agent Murphy, at the time that this incident occurred involving Mr. Borders, leading to his arrest, did the FBI make any effort to have Judge Hastings under surveillance so that there might be an immediate contact with Judge Hastings following whatever eventuated with Mr. Borders?

Mr. MURPHY. As I testified to earlier, the agents who had surveilled Mr. Borders and Judge Hastings earlier in the day were still under the opinion at the time the arrest was made that Judge Hastings was still at Mr. Borders' law office, when, in fact, he apparently had departed from the back door.

The VICE CHAIRMAN. So there was no surveillance of the rear door to the office to observe Judge Hastings depart in that manner if, in fact, he did?

Mr. MURPHY. There was surveillance of the rear of the building on spot checks, but apparently—I was advised by the agents there that it was just too difficult an area to set up a fixed surveillance without being noticed.

The VICE CHAIRMAN. So an effort was made for the surveillance of the back door, but it was unsuccessful?

Mr. MURPHY. My recollection is they advised that on the back door they had to spot check that area, and they could keep a fixed eye on the front door.

The VICE CHAIRMAN. Well, the thrust of my inquiry, to cut it short, Special Agent Murphy, is that there was obviously value to confronting Judge Hastings at a very early moment. And what I am seeking to find out is what effort was made by the Bureau to effectuate that.

Mr. MURPHY. Yes, sir.

The VICE CHAIRMAN. Because you have a long trail as to what happened, and it is——

Mr. MURPHY. Correct.

The VICE CHAIRMAN [continuing]. Likely to be different some time later, a day later.

Mr. MURPHY. What we had attempted to do was, as the decision was made to transport Mr. Borders, myself and two other agents drove directly to Mr. Borders' law office where we thought we were going to find Judge Hastings to see if he would agree to be interviewed about the matter. I testified as to what happened at the law office when we were told that he was not in there, and then we proceeded to the L'Enfant Plaza Hotel. And we made attempts, both at the desk and up at the room itself, to contact him, and we were just not able to locate him.

The VICE CHAIRMAN. Well, at that point, he was out of sight, and you have already put on evidence as to where he went following that point.

Mr. MURPHY. Yes, sir.

The VICE CHAIRMAN. You said that you believe that Mr. Borders was leaning toward cooperating. What precisely was said to lead you to that conclusion?

Mr. MURPHY. Well, from my experience as an agent and dealing with other people I have arrested or been involved in arresting in the past, my initial observation of Mr. Borders, I just had a gut feeling at that point that he was leaning in our direction, but that after he talked to his attorney and received some legal counsel, he had changed his mind by then.

The VICE CHAIRMAN. Gut feeling, but no specific facts to base it on?

Mr. MURPHY. No, just from experience.

The VICE CHAIRMAN. All right. Just one other question. Since you are the principal FBI agent on the matter, was an investigation done of Judge Hastings' finances and life style relating perhaps to unexplained bank deposits or a safe deposit box or any evidence of his living style beyond the means of somebody on a judicial salary and what other means he might have had?

Mr. MURPHY. We did subpoena all of the records of different accounts, credit cards, checking accounts, savings accounts that we were aware of, and there was nothing in any of them that would reflect other than a normal daily course of business.

The VICE CHAIRMAN. How about the life style question?

Mr. MURPHY. The life style question . . . I am not sure how to address that. When you say life style, you mean big spender?

The VICE CHAIRMAN. Well, where did he live? What kind of a car did he drive? What kind of suits did he have?

Mr. MURPHY. Yes, sir. I understand.

The VICE CHAIRMAN. How was he attired? Judges make $89,500 like Senators.

Mr. MURPHY. His life style——

The VICE CHAIRMAN. Check the suits.

Mr. MURPHY. I am in my third day in this suit. [Laughter.]

The VICE CHAIRMAN. Over how many months?

Mr. MURPHY. Believe me. It is starting to show.

His life style appeared to be within the means of his salary. Yes, sir.

The VICE CHAIRMAN. Thank you.

The CHAIRMAN. Senator Pryor.

Senator PRYOR. No questions.

The CHAIRMAN. Senator Rudman.

Senator RUDMAN. No questions.

The CHAIRMAN. Senator Bryan.

Senator BRYAN. No questions.

The CHAIRMAN. Are there questions from any of the other panel members? Senator Lieberman.

Senator LIEBERMAN. Agent Murphy, just a few brief questions.

First, I am wondering whether during the course of your investigation you ever document any conversations or meetings between William Borders and Hemphill Pride?

Mr. MURPHY. I do not believe that we documented them at the time they were occurring. It is my recollection that they did have some discussions or they did meet in early September in the Washington area. That is my recollection, but without reviewing a document or two, I would not be able to say that with specific dates.

Senator LIEBERMAN. Obviously, that is of some importance because of the reference to Hemphill Pride and the letters to Pride.

Mr. MURPHY. Yes, sir.

Senator LIEBERMAN. And one of the two conversations that we have got between Judge Hastings and Mr. Borders.

Mr. **Murphy**. Yes, sir. My recollection is, though, that Mr. Pride has testified in other hearings. When we interviewed him, he, you know, said that that was not a topic of their conversation.

Senator **Lieberman**. Right. OK. We will hear from him. But from the best of your recollection, you think that Borders and Pride may have met once in Washington, DC, in early September?

Mr. **Murphy**. My recollection is that Mr. Pride was traveling through that area to go somewhere else and did meet with Mr. Borders, I believe. But, again, I am going without, you know, having refreshed my recollection at this point.

Senator **Lieberman**. And we have heard two intercepted phone conversations between Judge Hastings and Mr. Borders: one about the so-called letters for Pride.

Mr. **Murphy**. Yes, sir.

Senator **Lieberman**. And the second a discussion about travel plans, essentially.

Mr. **Murphy**. That is correct.

Senator **Lieberman**. Those, I take it, are the only two conversations between Judge Hastings and Mr. Borders that were intercepted?

Mr. **Murphy**. Yes, sir. That is correct.

Senator **Lieberman**. And a final question, a much more general question. Obviously, William Borders is central to this whole story, and yet he is, at least in the contemplation of this one committee member, a shadow. We do not see him here. We hear some conversations. We hear him referred to. I understand this was a covert and not an overt investigation by the FBI in the sense that you would typically interview a lot of people about this person, and yet——

Mr. **Murphy**. At the initial stages, yes, sir.

Senator **Lieberman**. Correct. And yet you did overhear a lot of his conversations. I just wonder if you would share—and what is obviously striking about this man is that here Marty Rogers comes in and recognizes his name on a travel list as a prominent Washington attorney. He is honored by the National Bar Association. At the same time, we hear tapes of him making a deal to do something obviously illegal.

I want to invite you to share with us, based on your leadership of this investigation, your impression of William Borders. Who was he? Who is he? What moved the man?

Mr. **Murphy**. I guess the basic problem I would have with that, Senator, is that aside from the arrest situation and seeing him at his trials and the exchanging of hello or, you know, how are you, I never had any conversations with Mr. Borders to determine what type of individual—or get a good impression. I know what the facts suggest to me.

Senator **Lieberman**. What do they suggest to you?

Mr. **Murphy**. Well, they suggest to me that he was an individual who, you know, had an education, appeared to have a successful law practice, and decided to go bad. I mean, that sounds basic, but that is—we never got to talk, so I never really got to know the man.

Senator LIEBERMAN. Could you determine anything else based on the range of telephone conversations that the FBI intercepted that were unrelated to the Hastings matter?

Mr. MURPHY. Well, I believe that there were over 2,000 calls that were actually intercepted, and especially since it was a law office, the minimization factor of the title III did not allow the agents to go into any conversations that would not directly apply to this investigation. So we really did not get a feel for him that way.

Senator LIEBERMAN. OK. Thank you.

Senator BRYAN. Mr. Chairman, could I?

The CHAIRMAN. Yes. Senator Bryan.

Senator BRYAN. Agent Murphy, if I can take you back to the point in colloquy that you and Senator Specter were talking about immediately after Borders' apprehension, his return to the motel room, and that period of time in which there was a request for the attorney, the attorney arrived, and there were several points at which counsel apparently conferred privately with Mr. Borders.

During that period of time, from the apprehension until ultimately Mr. Borders was processed and taken into custody, in your presence did anyone suggest to Mr. Borders that the Bureau felt that Judge Hastings was in any way involved?

Mr. MURPHY. You know, he was advised when he was arrested of the charges and what they stemmed from, and when he heard the conversations, the taped conversations, there was no doubt in my mind that he knew that we were talking about involvement with Judge Hastings.

Senator BRYAN. If I could just follow up on that, precisely what was he told as to the nature of the charge on which he was being apprehended? That is to say, specifically was the individual judge who was alleged in being involved with mentioned at that time?

Mr. MURPHY. My recollection is we would have advised him that he was being placed under arrest for violation of the Federal bribery statutes and conspiracy statutes, and that it involved a matter coming before Judge Alcee Hastings in District Court, U.S. District Court in south Florida. And then after playing the tapes, I would think there was no doubt in his mind as to what we were interested in and who.

Senator BRYAN. The reason why I ask that is because you seem to suggest that before the tapes were played that your gut feeling, I think was the word you used, was that Borders seemed to be inclined, or you thought that he was on the verge of—if I can put words in your mouth—of cooperating; that is, providing additional information as to the nature of the conspiracy.

Mr. MURPHY. Well, that was as the tapes were being played. In other words, as he saw that we, in fact, had monitored both those conversations. As that sequence was occurring, my feeling was that he just might flip. But as it turned out, he decided to talk with an attorney first before he made his decision, and from that point on his decision I think got stronger in the other direction.

Senator BRYAN. Refresh my memory. Was Mr. Shorter there at the time that the taped conversations were played for Mr. Borders?

Mr. MURPHY. No, sir. They were played prior to that point in time. Yes.

Senator BRYAN. Thank you very much, Mr. Chairman.

The **Chairman**. Senator Kerrey.

Senator **Kerrey**. Special Agent Murphy, in regard to the September 11th meeting——

Mr. **Murphy**. Yes, sir.

Senator **Kerrey** [continuing]. At National Airport, is my understanding correct, was surveillance set up for that meeting?

Mr. **Murphy**. What was set up on September 11th, that evening, was that an agent from Washington field office, because we knew what flight—from checking the reservation list what flight Mr. Borders was scheduled to travel down on, he traveled to the airport and was waiting at the Air Florida area to see if—and let us know that Mr. Borders did get on the plane. Because at that point in time, we had no idea that Judge Hastings was actually heading in that direction. So all we had was somebody standing by there to say he is on the plane, it took off, and it should be arriving in Miami about 9:30 or so.

Senator **Kerrey**. So you did not have surveillance. That really would not qualify as surveillance?

Mr. **Murphy**. Well, we had surveillance at the Air Florida boarding area. Mr. Borders never showed up there for his scheduled 7:30 departure.

Senator **Kerrey**. It seems like obviously a critical meeting point, and I——

Mr. **Murphy**. Well, at the time we did not know there was going to be a meeting up there, if there was, in fact, a meeting. And that was our problem. We knew Mr. Borders was coming to south Florida, and Judge Hastings had been on the bench earlier in the afternoon in south Florida. So we had no knowledge that a meeting might take place up in the Washington National Airport.

Senator **Kerrey**. At the Fontainebleau Hotel dinner where Judge Hastings had dinner, was there any thought given to requiring or asking for more specific signs, a specific meal, clothing, other details that would indicate that——

Mr. **Murphy**. Yes, sir. We did ask the undercover agent to try and be specific about the type of meal ordered or a particular type of bottle of wine, something that, you know, would have been hopefully specific enough that it would have had to have been passed on to somebody to make that order. The undercover agent reported to me that he just did not feel comfortable with it as the meeting was progressing, and he never was able to enter, or gain that part of it.

Senator **Kerrey**. And, finally, it seems to me that in the case itself and the attempt to get some action and response to the reported bribe that we are talking about two possibilities. My understanding is that the hope was to get a reduction of sentence as opposed to simply the forfeiture of property, which could arguably be done as a consequence of legal precedent. Why was the bribe paid out to Borders with just the forfeiture of the property?

Mr. **Murphy**. Well, if I could go back just to an earlier point in time, when we first went to that meeting, the September 12th meeting, with Mr. Borders, our undercover agent was not looking or seeking any type of return of property. He was going there strictly because he was under the impression that for $150,000 the three-year jail sentence that the Romano brothers had received in July would be able to be handled. As far as a show of proof, we were going there looking for the specific meal or bottle of wine ordered at a restaurant at a certain time at a certain date, and it was Mr. Borders who arrived at that meeting bringing his own show of proof. So the return, the timing of the order, the issuing of the order, that is what Mr. Borders, I believe, is referring to on his conversation with the undercover agent: that the hotel dinner is all well and good, but this is how you will really know because this is something that only, you know, the judge can do and the timing of that order.

So, in effect, we went to the first meeting looking to pay money to have the jail sentences reduced and expecting only to have one show of proof, and we actually came out of the first meeting with two shows of proof that were going to be forthcoming: one we asked for and one that William Borders brought to the meeting with him. The forfeiture, you know, the return of that property, was nothing that we ever sought. It was something that he was giving to us to show us that he had the judge in with him.

The CHAIRMAN. Senator Leahy.

Senator LEAHY. Very briefly, Mr. Chairman. I apologize for being a little bit late this morning. I had a matter on the floor.

Mr. Murphy, I want to clear up a couple of thoughts in my mind. What steps did you take to trace the $25,000 that first went to Mr. Borders?

Mr. MURPHY. We initially recorded the serial numbers, and those recorded numbers were entered into the National Crime Information Computer.

Senator LEAHY. NCIC.

Mr. MURPHY. NCIC, which would be a standard, you know, investigative tool. However, there is just nothing but luck involved in that. Someone has to take notice and see one of those bills and check it——

Senator LEAHY. You never found them?

Mr. MURPHY. So we never went anywhere with that.

What we tried to do, and did, hopefully, was subpoena the normal—any financial record that we could find on either gentleman, and we had no luck in locating any amounts that appeared to be similar to the $25,000.

Senator LEAHY. You never found the $25,000 or any trace of it?

Mr. MURPHY. No, sir.

Senator LEAHY. It is gone.

Mr. MURPHY. It is gone. Yes, sir.

Senator LEAHY. Could you trace the $125,000 if they let it go and if you had not arrested Mr. Borders immediately?

Mr. MURPHY. I do not believe we would have much greater chance of that, no, sir, because of the same reasons. I mean, there are things like numbered accounts and wire transfers, et cetera.

Senator LEAHY. But he was under constant surveillance, 24-hour surveillance?

Mr. MURPHY. It sounds like a nice thought, sir, but it is just not possible. You know, if he takes the money into a large office building in a briefcase and walks out with that briefcase at the end of the day, I mean, obviously you cannot follow him into everyone's office without being noticed. So the briefcase may or may not be full by the time the day is over.

Senator **Leahy**. When he was in the car, you were dealing just with a recording. You did not have a transmitter on the car; is that correct? I mean, what we heard yesterday was from a recording. It was not transmitted out.

Mr. **Murphy**. That is correct.

Senator **Leahy**. So you had no contemporaneous way of knowing what was being said in the car; is that correct?

Mr. **Murphy**. That is correct. We had no idea where Mr. Borders was going to take Mr. Rico.

Senator **Leahy**. But in setting up your surveillance, you did plan for the contingency that they might do just exactly what they did—that is, get in the car and drive off somewhere—did you not?

Mr. **Murphy**. No, sir, because we really did not feel that we were going to let that happen. I mean, if he had said, "Come on, we will go over to the restaurant at the hotel here," we might have let the meeting go in that direction, if we knew that, you know, that——

Senator **Leahy**. Well, I mean, you had some contingency for it. I mean, you had police cars that followed him out there.

Mr. **Murphy**. Well, basically, those agents in the vehicles were ones who were supposed to have followed him over there, and they lost him en route. So they were requested to come over to the hotel and see if they could spot him coming in.

Senator **Leahy**. Now, you said you had about a dozen agents, as I recall, on this stakeout?

Mr. **Murphy**. There were probably 12 to 15 or 18 agents in the area of the hotel at the time of the arrest, and I would guess five or six vehicles were probably involved in the moving surveillance part of it; and another half a dozen agents might have been in the room with me or, you know, in close proximity.

Senator **Leahy**. And you were not prepared for the eventuality they might just go out and get in the car and drive off?

Mr. **Murphy**. Well, it was not something that we felt, you know—that is why we went to the trouble of, you know, setting the room up. We did not expect that there would be a problem. Sometimes you just cannot anticipate every variation.

Senator **Leahy**. Well, let us say they just go to the room, talk about the money, Mr. Borders says, "OK, bye-bye, thank you very much," and leaves. What do you do then? Do you grab him? Would you have grabbed him? I mean, was there——

Mr. **Murphy**. That was basically our intention, to make the arrest after the exchange of the money, yes, sir.

Senator **Leahy**. You understand the concern I have? Or maybe you do not. Let me explain the concern I have and I think a number of us have.

Mr. **Murphy**. Yes, sir.

Senator **Leahy**. Would you not have had a far better case—you obviously had a case against Borders based on the electronic surveillance. Would you not have had a far better case if your ultimate target was Judge Hastings to follow him to where—or at least do everything possible to get to a situation where he might actually give the money to Judge Hastings? I mean, you are going to be able to convict him anyway. You are going to be able to have a case against Mr. Borders anyway based on what happened. If, indeed, your ultimate target was Judge Hastings, would it not have been wiser to have taken some risk of putting together something other than a circumstantial case?

Mr. MURPHY. Well, the problem that we had was that we just did not feel that we could successfully follow the money for more than a very, very short period of time. I mean, once Mr. Borders has the money in an uncontrolled, unstructured situation, we have no idea what he is going to do.

Senator LEAHY. Well, you let him do that once before. You let him take $25,000 in an unstructured, uncontrolled circumstance.

Mr. MURPHY. Well, because that was an amount of money that was already decided, the down payment that had been approved to let go with Mr. Borders.

Senator LEAHY. Well, we are talking about a case that by the time it gets back and forth is going to cost the taxpayers, including all of this, probably millions of dollars. Do you base the substance of your case on whether you have got $25,000 or $100,000 in buy money out here?

Mr. MURPHY. I may have had my own personal opinion, sir. I did not really make the final decision as far as whether the $125,000 would ever be allowed out of our sight.

Senator LEAHY. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Other questions? Senator Durenberger.

Senator DURENBERGER. Thank you, Mr. Chairman.

Agent Murphy, would you describe briefly for me how long you have worked in the Miami office and what your responsibilities have been in that office?

Mr. MURPHY. I arrived in the Miami Division after a transfer from working in San Juan for two years in December of 1978. And then since that time, initially when I was there, I worked on a squad that did some surveillance work—basically would be the way to describe it—for other squads in the office.

I was transferred back into the office and worked some organized crime matters. In 1981, I ended up being assigned with this case. When this case ended, I was assigned to some other organized crime matters and some narcotics cases. And for about a three- or four-year period, I worked bank robberies and fugitives. And for the last year or so, I have been working the surveillance work again.

Senator DURENBERGER. Most of these are cases which at one point or another, after the completion of an investigation, are prosecuted and tried in the Southern District of Florida, I take it?

Mr. MURPHY. Yes, sir.

Senator DURENBERGER. We have heard testimony that, even while going through very difficult times here in the last number of years, that Judge Hastings has been very courteous and very cordial. We have heard testimony that he is a fine jurist and, at least in the opinion of one of the previous witnesses, has a good reputation. Based on your experience, do you agree generally with that opinion?

Mr. MURPHY. I have never—I do not recall ever appearing before Judge Hastings other than I was in his courtroom once on another matter, and we, you know, acknowledged each other and said hello.

I do not really have any personal experience of ever having taken a case before him, if that can answer it.

Senator DURENBERGER. Let me ask, then, a slightly different but related question, again on the same premise. Can you describe for us how, if at all, the relationship between the Miami office of the FBI and cases that might come before Judge Hastings has changed since 1981?

Mr. MURPHY. Obviously, the FBI does not have any control as far as picking or choosing a judge in a case, and I would say they were probably going along fine until the 1985 Title III incident, which that was one of the counts in the bill of impeachment here.

Senator DURENBERGER. So based on whatever you might know about the relationship, it is principally since 1985 that there has been some change in the FBI's—I cannot think of a better word than "relationship." Maybe you can, and I think you know the kind of question I am trying to ask.

Mr. MURPHY. Well, perhaps I can answer it by saying you have no choice as far as who you go before, or at least you are with a prosecutor. You present your evidence, and hopefully you are going to get a fair shake in the courtroom. And there is nothing an agent can do about it basically one way or the other, so you do your best and you see what happens.

I do not think anybody would ever formally file any complaint or whatever. I am not aware of any.

Senator DURENBERGER. So you are not familiar with any situation in which the Miami office of the FBI, having a choice of judges on a particular case, to authorize some particular activity that needed to be authorized by a judge, would deliberately choose to go to some judge other than Judge Hastings?

Mr. MURPHY. Well, again, I am not—no, I have no information of that, but it would be the local prosecutor's decision as far as which duty judge to go to that month for, say, a particular type of motion or order.

Senator DURENBERGER. Thank you very much.

The CHAIRMAN. Senator Rudman.

Senator RUDMAN. Just very briefly. Agent Murphy, there has been a lot of discussion here about what happened the day of the arrest. You have been in the Bureau a long time. Would it be likely for someone receiving a sum of money that was intended for an ultimate bribe, from your experience if you have any, from the Bureau's experience, to take that satchel of money directly to the person who was the eventual receptor of the bribe?

Mr. MURPHY. I am sure it can happen sir, but as I testified to, I believe that these individuals were sophisticated enough, because of both of their backgrounds, that that was not going to happen.

Senator RUDMAN. And, of course, had you allowed Borders to leave the scene and enter any building, at that point you would have lost all control of what happened to the money; am I correct?

Mr. MURPHY. As far as I am concerned, it would be all effective control. Yes, sir.

Senator RUDMAN. And you would know where the money was, and at that point you would not know if some third, fourth, or fifth party had the money; am I correct?

Mr. MURPHY. That is correct. Yes, sir.

The Chairman. Let me ask one additional question. Mr. Rico was advised by Mr. Borders that the forfeiture order would issue on the 29th of September, as I recall your testimony; is that correct?

Mr. Murphy. He had advised or we surmised from what he stated on the taped conversation that it would be 10 days from the 19th. So it would be the 29th. Yes, sir.

The Chairman. So it would be no later than the 29th, at any rate. In fact, it did not issue on the 29th. It issued on the 6th of October.

Mr. Murphy. Yes, sir.

The Chairman. What was your reaction when the 29th came and went and there was no forfeiture order?

Mr. Murphy. We decided to make a phone call to Mr. Borders and find out what happened, because we did not know. That was our next step in the investigation, to call him and ask him where it is and see what happened next.

The Chairman. Did that raise any doubts in your mind about the truthfulness of Mr. Borders' claims about his ability to influence the judge on these issues?

Mr. Murphy. At that point, sure, yes, sir.

The Chairman. In retrospect, it does not seem to you a significant problem or a significant defect in demonstrating the ability of Borders to influence Hastings?

Mr. Murphy. Not based on the series of phone calls starting on October 2nd and ending about October 7th, and other things that happened on October 5th, Monday morning.

The Chairman. So your view is that those items cured whatever concern or doubts that you had about the ability of Borders to influence the judge?

Mr. Murphy. In my view, yes, sir. Yes, they did.

The Chairman. Are there any other questions by the committee?

Senator Pryor. Mr. Chairman?

The Chairman. Yes. Senator Pryor.

Senator Pryor. Mr. Murphy, at the moment Mr. Borders was arrested—the money had been given to him—at that moment of that arrest, did you have a feeling in your mind of certainty that, yes, Mr. Borders had been arrested, $125,000 had been given to him, did you have the feeling of certainty that the case had at that moment been made against Judge Hastings?

Mr. Murphy. I would say that we certainly believed that we had strong evidence to that point; that in my mind, because of the order being issued and the Fontainebleau dinner, I felt that we had enough to proceed to a grand jury proceeding at that point. Because if we thought we had enough evidence on October 9th when we arrested William Borders, we would have arrested Judge Hastings. We had to go further into the investigation into the overt stages with grand jury and interviewing to put together the rest of the evidence, such as travel records, telephone conversations, et cetera. So at that point in time, we did not arrest Judge Hastings, no.

Senator Pryor. Thank you, sir.

Mr. Murphy. Yes, sir.

The Chairman. Is there any reason this witness should not be excused at this point?

[No response.]

The **Chairman**. Agent Murphy, you are excused. We appreciate your testimony very much.

[Witness excused.]

The **Chairman**. The House managers can call their next witness.

Mr. **Bryant**. At this time, Mr. Chairman, the House calls H. Paul Rico.

[Pause.]

Mr. **Bryant**. Mr. Chairman, the direct examination of this witness will be conducted by Hamilton Fish.

The **Chairman**. Mr. Rico, would you raise your right hand? Do you, H. Paul Rico, swear and affirm that the evidence you shall give in the case now pending between the United States and Judge Alcee L. Hastings shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. **Rico**. I do.

The **Chairman**. Please be seated.

Mr. **Fish**. Please state your name for the record.

TESTIMONY OF H. PAUL RICO

DIRECT EXAMINATION

Mr. **Rico**. H. Paul Rico.

Mr. **Fish**. Mr. Rico, where do you live?

Mr. **Rico**. 1598 Northeast 104th Street, Miami Shores, Florida.

Mr. **Fish**. And where are you employed?

The **Chairman**. Would you pull that microphone up a little closer, please, so all the committee could hear? Thank you.

Mr. **Rico**. All right. Where am I employed?

Mr. **Fish**. Where are you employed?

Mr. **Rico**. I am employed at Miami Jai Alai.

Mr. **Fish**. And what is your position there?

Mr. **Rico**. I am general manager of Miami Jai Alai and director of operations for World Jai Alai.

Mr. **Fish**. Mr. Rico, prior to working for Miami Jai Alai, what was your occupation?

Mr. **Rico**. I was a special agent, Federal Bureau of Investigation.

Mr. **Fish**. And how many years did you serve as special agent?

Mr. **Rico**. Twenty-four-and-a-half years.

Mr. **Fish**. Mr. Rico, when did you retire from the FBI?

Mr. **Rico**. I retired the end of April 1975.

Mr. **Fish**. Mr. Rico, in 1981, after your retirement, were you asked by the FBI to participate in an undercover investigation of an alleged bribery conspiracy involving a Federal judge?

Mr. **Rico**. Yes, I was.

Mr. **Fish**. When you were contacted by the FBI, were you told what Federal judge was allegedly involved in the conspiracy?

Mr. **Rico**. No.

Mr. **Fish**. What was your role in the undercover investigation?

Mr. **Rico**. I eventually learned my role was to impersonate one Frank Romano.

Mr. **Fish**. As part of the investigation, did you meet with William Borders at the Miami International Airport on the morning of September 12, 1981?

Mr. Rico. I did.

Mr. Fish. At that time, were you wearing a body recorder?

Mr. Rico. Yes, I was.

Mr. Fish. In fact, Mr. Rico, were all the conversations you had with William Borders as part of the bribery investigation recorded?

Mr. Rico. Yes, they were.

Mr. Fish. During your conversation with William Borders on September 12, 1981, at the Miami International Airport, did Mr. Borders write anything down for you on a piece of paper?

Mr. Rico. Yes, he did.

Mr. Fish. And what did he write down?

Mr. Rico. He wrote down "$150,000," and he wrote down "in 10 days." And I could not read the other word.

Mr. Fish. Did you observe what Mr. Borders did with the piece of paper?

Mr. Rico. He retained it.

Mr. Fish. Mr. Rico, based on your conversation with Mr. Borders that morning, what did this $150,000 figure represent?

Mr. Rico. This amount of money represented the money that I would have to come up with in order that both myself and my brother's sentence would be taken care of.

Mr. Fish. Thank you.

Thank you, Mr. Chairman.

The Chairman. Is there cross-examination of this witness?

Mr. Anderson. Mr. Chairman, I think perhaps with Representative Fish we ought to—I realize the Chair has expressed its preference that witnesses only come once. Mr. Rico, as you know, is on our witness list with regard to the Mayor Clark matter. Does the Chair wish me to proceed into both lines at this time? I do not wish to destroy the House's order of proof. That is the instruction I wish.

The Chairman. Does the House wish to be heard on the issue of whether Mr. Rico should be examined now about questions involved with the Article XVI of the Articles of Impeachment?

Mr. Fish. Yes, please, Mr. Chairman. First of all, such questions are clearly beyond the scope of my direct examination. Secondly, the chairman and the Senators will remember that in the opening statements by both Mr. Bryant and Mr. Anderson, the whole question was specifically postponed until a later time, and the gentleman reserved time for the argument at that time.

Also, it is our view that questions involving Title III would disrupt the presentation by the House on the bribery conspiracy case at this point.

Mr. Anderson. Mr. Chairman, if I could make clear, we are not asserting that we wish to pursue this. We are simply bringing to the Chair its issue. I have no problem with the managers' position on the issue. We will do either way the Chair wishes.

The Chairman. The chair will rule that this witness can be recalled as a witness to testify on that matter when the issue is before the committee. I think that would give us a more orderly presentation of the evidence.

Is there cross-examination of this witness on the line of questioning which Mr. Fish has just completed?

Mr. Anderson. Yes, Mr. Chairman, there is.

CROSS-EXAMINATION

Mr. **Anderson**. Mr. Rico, my name is Terry Anderson. Have we ever met before, sir?

Mr. **Rico**. No.

Mr. **Anderson**. Mr. Rico, in our dealings prior to October 9th, you were dealing with Agent Murphy, were you not, sir?

Mr. **Rico**. I was dealing with two agents.

Mr. **Anderson**. Agent Murphy and Agent Amoroso?

Mr. **Rico**. Yes.

Mr. **Anderson**. And you had dealt with Mr. Dredge, and obviously you had dealt with Mr. Borders; is that correct, sir?

Mr. **Rico**. I met Mr. Dredge, that is correct, and I met Mr. Borders. That is also correct.

Mr. **Anderson**. But prior to October 9, 1981, you had never met with, seen, or observed any conversations with Judge Hastings, had you?

Mr. **Rico**. No.

Mr. **Anderson**. And is it not correct, as I recall it, that really the first time you observed Judge Hastings or saw him was at the trial in 1983; is that correct?

Mr. **Rico**. In the courthouse, right. That is correct.

Mr. **Anderson**. Now, could I ask the clerk to provide the witness with House Exhibits 38B and 43B just simply to facilitate my examination?

Let me ask you to look at both exhibits so you are sure what I am talking about and can refresh your recollection as we go along. 38B has been introduced in evidence as a transcript of sorts of a conversation among initially you, Mr. Dredge, and Mr. Borders on September 12, 1981. You will recall that conversation. That was the first meeting on Saturday, September 12th?

Mr. **Rico**. Yes.

Mr. **Anderson**. And the second one is on Saturday, September 19, 1981, and, again, purports to be a transcript of, again, the recording you made of your dealings with Mr. Borders on that date?

Mr. **Rico**. That is right.

Mr. **Anderson**. Now, at that first meeting, you had been briefed by Agents Murphy and Amoroso about the information that a man named William Dredge had provided them as to the kind of deal Mr. Borders was willing to make, had you not?

Mr. **Rico**. Yes.

Mr. **Anderson**. And you understood that the bottom line was you were to portray yourself as a Romano brother who wished to get his sentence converted to avoid jail?

Mr. **Rico**. Correct.

Mr. **Anderson**. And you were aware that it was necessary that you establish with Mr. Borders some showing which might demonstrate that, in fact, Borders' claims with respect to Judge Hastings were more than nothing? A show of proof, I think it has been characterized.

Mr. **Rico**. Yes.

Mr. **Anderson**. Is that correct, sir?

Mr. **Rico**. Yes.

Mr. ANDERSON. Now, you had also been briefed that it was likely that a down payment or some up-front money would be necessary?

Mr. RICO. I do not think that we went into that specific detail at that time.

Mr. ANDERSON. Had you also been briefed that there had been a forfeiture of a significant amount of property?

Mr. RICO. Yes.

Mr. ANDERSON. And had you also been briefed that as part of this arrangement it might be possible to arrange to get a substantial amount of the property back?

Mr. RICO. No.

Mr. ANDERSON. You had not?

Mr. RICO. I had never been briefed to that. I have no recollection of that.

Mr. ANDERSON. Could I direct your attention to Page 3 of Exhibit 38B?

Mr. RICO. Yes.

Mr. ANDERSON. My concern, Agent Rico, is that it sounds as though you and Mr. Borders are working this out as though someone in the background had briefed both sides so that they were just really confirming an understanding. Specifically, Borders says, "Within 10 days, an order will be signed returning a substantial amount." You respond, "Uh-huh. Then the other will follow after that. You lost some property. Yeah. OK. Fine. Good."

That sounds as though the both sides appear to know what they are talking about, to have been briefed in advance, and this is just confirming a detail. Were you surprised when Mr. Borders suggested that there might be some property returned, to the best you can recall?

Mr. RICO. No, I was not surprised.

Mr. ANDERSON. And at that point on this date, the understanding is, your understanding of the agreement was that it would be returned with 10 days from the date of September 12th, was it not?

Mr. RICO. I think that I asked that, right.

Mr. ANDERSON. And he responded yes?

Mr. RICO. I do not know whether he did that, respond yes or not.

Mr. ANDERSON. Well, could I direct your attention to page 6, for example?

Mr. RICO. Yes. I see page 6.

Mr. ANDERSON. All right. And Mr. Borders is talking about, "Within ten days, he will give it to me. I will hold it until everything is done." Is that correct, sir?

Mr. RICO. That is what he was contending, right.

Mr. ANDERSON. And was it your understanding at that time that the intention was that the money would come back within 10 days of that time?

Mr. RICO. My understanding at that time is that he wanted me to put the money in the hands of a third party, which I did not want to do.

Mr. ANDERSON. Well, I understood that, but I also want your understanding in terms of——

Mr. RICO. I cannot really tell you what he is thinking when he says this. I can tell you what I am thinking when he says it.

Mr. ANDERSON. Are you thinking that the order will issue within ten days?

Mr. RICO. I do not—I have no way of knowing whether it's going to be issued within 10 days or not. I know that is what he is reporting here, but I cannot tell you.

Mr. ANDERSON. Well, when he reported it, did you understand that he was making you a promise?

Mr. RICO. Yes.

Mr. ANDERSON. That the order would come out within ten days from that date?

Mr. RICO. Yes.

Mr. ANDERSON. That was how you construed it.

Mr. RICO. Sure.

Mr. ANDERSON. Now, also in that conversation, he asks for some up-front money, "Yeah, OK." Was there any specification of the amount of the up-front money?

Mr. RICO. No. I do not believe so.

Mr. ANDERSON. So if I understand the nature of your transaction at that time, the steps that you understood that you and Mr. Borders had agreed to, it was that Mr. Borders would cause Judge Hastings to have dinner at the Fontainebleau Hotel; is that correct?

Mr. RICO. Yes.

Mr. ANDERSON. The following weekend, you would show up with an unspecified amount of up-front money?

Mr. RICO. Right.

Mr. ANDERSON. Within 10 days of September 12th, Judge Hastings would sign an order which would return an unspecified substantial amount of the property you had forfeited; is that correct, sir?

Mr. RICO. No.

Mr. ANDERSON. No?

Mr. RICO. No. I believe that that is what he said here. But as it went on, he indicated it was 10 days after.

Mr. ANDERSON. Well, now, please refresh your recollection.

Mr. RICO. Yes.

Mr. ANDERSON. You may want to compare the two transcripts. I agree with you he ultimately said at the second meeting——

Mr. RICO. Right.

Mr. ANDERSON [continuing]. It was 10 days from the 19th.

Mr. RICO. Right.

Mr. ANDERSON. But we are now on the first meeting for a moment.

Mr. RICO. Sure.

Mr. ANDERSON. You left that meeting understanding that an unspecified but substantial amount of property would be returned within 10 days of that first meeting; is that correct, sir?

Mr. RICO. That is what I was assuming he was saying, yes.

Mr. ANDERSON. Now, it has been suggested, which I had not heard or seen before in my study of the record, that in point of fact you had been briefed to try and arrange some further specification in connection with Judge Hastings' dinner at the Fontainebleau; that he order a special meal or something like that. Is that correct, sir?

Mr. **Rico**. I do not have any recollection at this time whether eight years ago it was inferred that I should have him order anything in particular. I do not.

Mr. **Anderson**. Do you have any recollection of anything? You know, the traditional red carnation boutonniere or——

Mr. **Rico**. No, no, no.

Mr. **Anderson**. Eight years is a long time.

Now, there did come a time when you again met the following Saturday to put down the up-front money; is that correct?

Mr. **Rico**. Yes.

Mr. **Anderson**. Now, who made the decision that $25,000 was the meaning of up-front money?

Mr. **Rico**. I do not know.

Mr. **Anderson**. Well, it was not you?

Mr. **Rico**. Oh, no, it was not me.

Mr. **Anderson**. But someone determined that that was the amount that should be put down as up-front money?

Mr. **Rico**. Yes, that is right.

Mr. **Anderson**. And you were not privy to those discussions?

Mr. **Rico**. No, I was not.

Mr. **Anderson**. And then on the 19th, Mr. Borders informed you that it would be 10 days from that date; is that correct, sir?

Mr. **Rico**. That is right.

Mr. **Anderson**. And the understanding was September 29th, was it not, sir?

Mr. **Rico**. I thought it was October 3rd I was going to meet him again.

Mr. **Anderson**. Yes. The order would come out by September 29th.

Mr. **Rico**. Yes.

Mr. **Anderson**. So firm was his commitment on that that the two of you planned to meet on Saturday, October 3rd, for the final payoff; is that not correct?

Mr. **Rico**. I think that you are stating it fairly correctly.

Mr. **Anderson**. Please refresh your recollection because my familiarity of the record is not what counts here.

Mr. **Rico**. All right.

Yes, he said, "Within 10 days from today on the 19th."

Mr. **Anderson**. And you expressed some surprise?

Mr. **Rico**. Well, sure.

Mr. **Anderson**. You said, "I thought it was 10 days from last time."

Mr. **Rico**. Sure.

Mr. **Anderson**. And he said, "Well, no big deal." And you say, "All right."

Mr. **Rico**. Sure.

Mr. **Anderson**. And then going on to talking about planning the meeting for the final payoff at the top of page 6, Mr. Borders says, "What about October the 3rd?"

Mr. **Rico**. Yes.

Mr. **Anderson**. And then you both agree on that; that that's a Saturday, same time, same place, balance of the money. Towards the end of the page, you say, "October 3rd. So that'll be done by then." Mr. Borders says, "Uh-huh."

Mr. RICO. Right.

Mr. ANDERSON. So as of September 19th, although your understanding of the timing has been reversed slightly, we are now on a firm schedule. By September 29th, this order returning a substantial, albeit unspecified, amount of property will be out. On October 3rd, Mr. Borders will fly down to the airport at Miami International. You will come in with $125,000. Deal done. Is that correct?

Mr. RICO. Yes.

Mr. ANDERSON. Now, directing your attention back to the conversation of September 12th, Mr. Dredge accompanied you to that meeting to effect the introduction, did he not, sir?

Mr. RICO. He did.

Mr. ANDERSON. And at the outset, he made the introduction; is that correct?

Mr. RICO. That is true.

Mr. ANDERSON. And as he was departing, Mr. Borders asked Mr. Dredge to wait for him because he wanted to talk with him after the meeting; is that correct?

Mr. RICO. That is what he said.

Mr. ANDERSON. And do you know whether Mr. Dredge waited and talked to him?

Mr. RICO. I think he waited.

Mr. ANDERSON. If you would consult the first four lines, Mr. Borders who I take it is referring to an unidentified male who has been pretty widely identified as William Dredge, Mr. Borders says, "You called him"; is that correct? It is the fifth line down?

Mr. RICO. Yes, I see that.

Mr. ANDERSON. Did you know at that time who the reference to the word "him" was?

Mr. RICO. No.

Mr. ANDERSON. Now, could I ask that this witness be shown House Exhibit No. 53B?

Do you recall that, sir? It purports to be a transcript of a monitored telephone conversation between yourself, in your pose as Frank Romano, and Mr. Borders.

Mr. RICO. Yes.

Mr. ANDERSON. And this is the call at 4:22 p.m. in which Mr. Borders assures you the matter has been taken care of, is it not? Directing your attention to page 2 of the transcript.

Down in the lower third of the page, Mr. Borders says, "It did but that's been taken care of"?

Mr. RICO. Yes, he says that.

Mr. ANDERSON. And this is the telephone conversation at 4:22 when Mr. Borders is assuring you that he has, that the matter has been taken care of?

Mr. RICO. That is what he is saying.

Mr. ANDERSON. And you construed that as meaning that whatever action Mr. Borders was capable of taking had been taken—at that time the matter was done? At least he was assuring you it was taken care of?

Mr. RICO. That is what he was saying.

Mr. ANDERSON. Now, again, if I could direct your attention to the next page, page 3, Mr. Borders makes a cryptic allusion as you are seeking further confirmation. He says, "Your friend should tell you something where you say you went before." Do you know who Mr. Borders is referring to there, sir?

Mr. RICO. I think he is referring to the lawyer's office.

Mr. ANDERSON. Well, had it not been explicitly a part of your understanding with Mr. Borders that you were not to consult your lawyers, and you indicated you were not either, and that the only communication with your lawyers would be if you told them to dismiss the appeal so you could file a motion? Do you recall that, sir?

Mr. RICO. I do not recall it that way, no. That is not my understanding.

Mr. ANDERSON. And so it is your view that the reference to "your friend," "where you say you went before," is that you had been communicating—that Mr. Borders thought you had been talking with your lawyers about this deal?

Mr. RICO. I wanted to give him the impression that I was looking for what he said I was going to get. So my only logical ruse would be that I contact the attorneys to see whether or not the property had been returned. I thought of telling him I was contacting the FBI, but I did not think that would play well.

Mr. ANDERSON. Well, I understand that, but Mr. Dredge had introduced the two of you, had he not?

Mr. RICO. Yes, he had.

Mr. ANDERSON. And Mr. Borders believed that Mr. Dredge was familiar with what was going on, was he not?

Mr. RICO. Yes, but I do not think Dredge was supposed to get the property. That is what we were talking about here.

Mr. ANDERSON. No. But presumably Mr. Dredge might have been—we are talking about who might have given you information and who might have given Mr. Borders information, and Dredge was someone known to both of you. Is that correct?

Mr. RICO. Yes.

Mr. ANDERSON. And at that point in time, as part of your ruse, it was part of the ruse to maintain that Dredge was the person who brought you together?

Mr. RICO. No, I was not trying to do that. I was trying to infer that I was in contact with my attorneys. That was in my mind.

Mr. ANDERSON. Can you find anywhere in these transcripts—and I take it, I think you testified before, every conversation between you and Borders was recorded; is that correct?

Mr. RICO. Yes.

Mr. ANDERSON. Are there any references in here where you say that you are talking to your attorneys about it?

Mr. RICO. No. I do not think there is.

Mr. ANDERSON. Are there references in here where you say you will talk to your attorney to get the notice of appeal dismissed after this first part of the deal has been done?

Mr. RICO. Those are his instructions to me, yes.

Mr. ANDERSON. Yes. And so that is the only time there is a reference to talk to attorneys?

Mr. RICO. Yes.

Mr. ANDERSON. But there are references, "your friend," "him," suggesting that there is conversation somewhere——

Mr. RICO. Right.

Mr. ANDERSON [continuing]. With an individual the two of you are familiar with?

Mr. RICO. Yes. What is in my mind when I am saying that could be different than what is in his mind. I just tell you that that is—when I am saying it, I thought the logical person that I would be contacting to see if the material was obtained would be an attorney.

Mr. ANDERSON. But at this point, eight years ago, you have testified that it is pretty darn hard to recall a lot of this stuff, is it not, eight years after the fact?

Mr. RICO. In some instances, it is.

Mr. ANDERSON. And what we do have eight years after the fact are the recordings of these conversations?

Mr. RICO. Yes, right.

Mr. ANDERSON. And your testimony is that every conversation you had with William Borders is preserved for posterity?

Mr. RICO. Yes. That is true. That is true.

Mr. ANDERSON. Now, I wonder if I might direct you to House Exhibit 43B, the transcript of the September 19th meeting where you have given the front money. There is still some negotiation going on in this meeting as to whether you will make the full payment after your sentences have been mitigated or before, is there not?

Mr. RICO. Yes.

Mr. ANDERSON. And you are expressing some concern about parting with all this cash before you are sure you had what the real deal is?

Mr. RICO. That is right.

Mr. ANDERSON. And one of the arguments, directing your attention to page 5, Mr. Borders advances as to why he needs the balance of the money now is he says, "No, no. That is to—that is just to compensate because the other guy's got to be having 20." Who is the other guy who has got to be having 20?

Mr. RICO. I have no idea.

Mr. ANDERSON. Did it ever occur to you, Mr. Rico, or did it ever occur to anyone else that Billy Dredge may have been triple dealing, selling William Borders in exchange for probation, and clipping the United States Government for $20,000 as part of the scam? I have no further questions of this witness at this time.

The CHAIRMAN. The witness can respond to that last question if he has an opinion on it.

Mr. RICO. I never considered that a viable possibility.

The CHAIRMAN. Is there any redirect examination of the witness?

Mr. FISH. Yes, there is, Mr. Chairman.

Mr. Rico, let me direct your attention, please, to the bottom of page 5 of House Exhibit 38B, starting with that portion at the bottom of the page that starts, "OK now." Do you see that?

Mr. RICO. Yes.

Mr. FISH. And if you would review the portion starting at "Okay now" through Mr. Borders' long statement in the top one-quarter of page 6.

Mr. RICO. Yes.

Mr. FISH. At that time, Mr. Rico, was Mr. Borders asking you about paying money to Mr. Dredge and then the order would come out 10 days after Dredge received the money?

Mr. RICO. No. It was until everything was done, in Mr. Borders' words. "Within 10 days, he will give it to me. I will hold it until everything is done."

Mr. FISH. So when would the 10 days start running?

Mr. RICO. Well . . . I cannot—I have no—really, whatever is here is here.

Mr. FISH. All right. Let us look at page 6 there where it says, "WAB . . . within 10 days."

Mr. RICO. Yes, right.

Mr. FISH. "Within 10 days, then he."

Mr. RICO. Yes.

Mr. FISH. "He" is whom?

Mr. RICO. I assume that he is referring to giving the money to Dredge.

Mr. FISH. "He" is Dredge.

Mr. RICO. Right.

Mr. FISH. "Will give it to me." What is "it"?

Mr. RICO. The money, until everything is done.

Mr. FISH. "Will give it to me" period.

Mr. RICO. Right.

Mr. FISH. So it is, "Within the 10 days, Dredge will give the money to me" is what is saying; is that correct?

Mr. RICO. I know that is what it says, but I do not know what the exact meaning of this is at this time.

Mr. FISH. Then he goes on and says, "I will hold it." That, again, refers to the money?

Mr. RICO. Right.

Mr. FISH. "Until everything is done."

Mr. RICO. Right. Right. And I assume that means that he is going to hold the money until everything is done.

Mr. FISH. That is my understanding.

Now, go down a little further to the fourth line. "You give it to him. He says he's got it. Within ten days, the order will come down."

Mr. RICO. Right.

Mr. FISH. Now, does that mean to you that the order—the 10 days will start running after Dredge says that he has got the money?

Mr. ANDERSON. Objection. I am trying to be patient, but this is fairly crucial and I think this is leading. "Does that mean to you that this is," and then tells him——

Mr. FISH. What does that mean to you, then, Mr. Rico?

Mr. RICO. That is what it says.

The CHAIRMAN. The witness—I think the question was revised, and the witness can go ahead and respond.

Mr. RICO. Yes. It says, "You give it to him. He says he's got it." And it would be 10 days from then.

Mr. FISH. Thank you. At that time, Mr. Rico, had the money passed?

Mr. RICO. No. No.

Mr. FISH. Did you have any contact with Mr. Dredge after he introduced you to Mr. Borders on September 12th?

Mr. RICO. No.

Mr. **Fish**. All right. Did you raise with Borders the possibility of the judge ordering something, something special? I refer you to page 7 of the transcript.

Mr. **Rico**. I was considering it, but I thought I might be going a little too far if I did that.

Mr. **Fish**. Mr. Rico, going back to an earlier time, prior to being contacted by the FBI to participate in the investigation of the bribery conspiracy, did you know William Borders?

Mr. **Rico**. No.

Mr. **Fish**. Had you ever heard of him?

Mr. **Anderson**. Objection, Your Honor. I think this goes beyond the scope of my cross. I do not mind him opening it up. I guess I would like to get a ruling.

The **Chairman**. The objection is overruled. You can proceed.

Mr. **Fish**. Had you ever heard of Mr. Borders?

Mr. **Rico**. No.

Mr. **Fish**. Prior to being contacted by the FBI to participate in the investigation, had you ever heard of or met William Dredge?

Mr. **Rico**. No.

Mr. **Fish**. And as you said, you had no contact with Mr. Dredge after he introduced you to Mr. Borders on September 12th.

Were you paid for impersonating Frank Romano in the undercover operation?

Mr. **Rico**. No.

Mr. **Fish**. Well, Mr. Rico, I think we would all be interested. Why did you agree to impersonate Frank Romano?

Mr. **Rico**. Well, I spent twenty-four-and-a-half years of trying to get other people to help me when I was an agent, so I did not think I could turn the Bureau down if they wanted me to help them. That is why I did it. And they told me that they wanted to quickly prove or disprove a very serious allegation concerning a Federal judge.

Mr. **Fish**. No further questions, Mr. Chairman.

The **Chairman**. Is there recross-examination?

RECROSS-EXAMINATION

Mr. **Anderson**. Two points.

Agent Rico, I wonder if I could ask you to look at the top of page 2 of House Exhibit 43B. This is the transcript of the September 19, 1981, meeting in which you pay the up-front money. Do you have that page in front of you?

Mr. **Rico**. Page 2?

Mr. **Anderson**. Page 2.

Mr. **Rico**. Yes.

Mr. **Anderson**. In your first remarks, you conclude with my understanding was that some property was going to be released. You recall that, do you not? Or not that you do not recall it. That is what you said at that meeting, is it not?

Mr. **Rico**. Yes.

Mr. **Anderson**. And Mr. Borders says, "Within 10 days," and you respond immediately, "Within 10 days of the last time we talked, right?"

Mr. **Rico**. That is right. That is what I said.

Mr. ANDERSON. And that confirmed your understanding that you thought the money, after the September 12th meeting, was coming out by September 22nd; is that not correct, sir?

Mr. RICO. I was trying to elicit a date from him, and I was trying to get it as quick as possible. For my purposes, I thought the quicker it happened the better. But he explained that it was 10 days from today.

Mr. ANDERSON. I understand. But based on your prior conversation, your immediate response was that it was, "Within 10 days from the last time we talked, right?"

Mr. RICO. But that was to put him——

Mr. ANDERSON. That is what you said, is it not?

Mr. RICO. Yes, that is true. That is exactly what I said.

Mr. ANDERSON. And that is all we have eight years after the fact——

Mr. RICO. That is right.

Mr. ANDERSON [continuing]. As really the only evidence of what went down then.

Mr. RICO. Fine.

Mr. ANDERSON. Now, Agent Rico, who was it that recruited you to come back into service and aid in this investigation?

Mr. RICO. Anthony Amoroso and Bill Murphy.

Mr. ANDERSON. And you had a fairly close relationship with Anthony Amoroso, did you not?

Mr. RICO. Yes.

Mr. ANDERSON. Thank you.

EXAMINATION BY THE COMMITTEE

The CHAIRMAN. Mr. Rico, you indicated that when you were first approached by the FBI to serve as an undercover agent in this case you were not told who the Federal judge was that was involved; is that correct?

Mr. RICO. That is correct.

The CHAIRMAN. When were you told?

Mr. RICO. After I agreed and signed a contract.

The CHAIRMAN. Was there a reason in your mind why they waited until you had signed the contract to advise you of that? Is there some significance there that we should know?

Mr. RICO. No. I may even be wrong on that. I just know that it was not until I agreed to do it before they told me who it was.

The CHAIRMAN. But there is no purpose that you read into the FBI's failure to tell you of that at a prior time?

Mr. RICO. Well, I do not think that the Bureau would tell someone of an ongoing investigation unless they were going to be sure that they were going to be working with that party. I do not think that they would be going door to door to try to——

The CHAIRMAN. So that is the only purpose in not giving you that information initially?

Mr. RICO. Right.

The CHAIRMAN. That until they were sure you were going to participate and help with the investigation, they did not want to reveal that information.

Mr. RICO. That is what I think, yes.

The CHAIRMAN. Senator Specter.

The VICE CHAIRMAN. Thank you, Mr. Chairman.

Mr. Rico, when you were dealing with Mr. Borders, did you ever conclude that or believe or think that Mr. Borders might be apprehensive about the transaction that you and he were engaging in?

Mr. RICO. Absolutely. Yes, I did.

The VICE CHAIRMAN. Did you ever consider that you were pushing it a little hard from your end to be pressing him to receive the payment, including going to Washington to complete the transaction?

Mr. RICO. That was always a danger, pressing too hard, yes. At times I did not press any further rather than want to keep the thing going.

The VICE CHAIRMAN. We have heard some of the tapes. We have heard tapes, but they do not represent necessarily all of the transactions. Did you ever have a sense that Mr. Borders was backing off in any way?

Mr. RICO. Not backing off, no. Apprehensive, though.

The VICE CHAIRMAN. But not backing off?

Mr. RICO. Right.

The VICE CHAIRMAN. Was there a sort of indifference on Mr. Borders' part, or how would you characterize it, about actually getting the last $125,000?

Mr. RICO. Mr. Borders always seemed to—if I proposed, "Let's have a cup of coffee," he would say, "Let's go for a walk." If I proposed, "Let's go downstairs and get the money," he would propose he would "stay here and you go down." He would never do—when I invited him into the room, he invited me outside the room. Probably if I invited him outside the room, he probably would have said, "Let's go in the room." That is the way he was. He just did not want to seem to have any guidance as to what his activities were going to be. He was, I thought, a very cautious individual.

The VICE CHAIRMAN. Mr. Rico, impressions and feelings and senses are very different from facts, obviously, but I am going to ask you a question about impressions or senses.

There is one conversation where arrangements are made for the payment of the $125,000 which appeared to me to raise a question, at least in my mind, as to almost the level of indifference on the part of Mr. Borders, which suggests to me the possibilities that—and I have not drawn this conclusion, but I raise the question for your comment as to whether this was such a frequent occurrence that it was almost a matter of indifference to him, or perhaps that he was suspicious and was backing off. But there is a tone in his responses to you which raises the question in my mind so that I would, at least for myself, think it of value to get your impression as to what was going on between the two of you.

Mr. RICO. Are you referring to the telephone conversations in Washington, DC that I had with Borders? Are those the conversations that I had with Borders?

The VICE CHAIRMAN. I am referring to the conversations where you are initiating the talk about making the payment. You are pressing him to conclude the transaction to get the money, and then the conversation where you arrange to go to Washington instead of have him come to Florida. After all, you had the $125,000. It was not burning a hole in your pocket.

Mr. RICO. Right.

The VICE CHAIRMAN. I thought it read very much as if you were the moving, anxious party and he was—I do not know. What was he? Unconcerned? Indifferent? Blase? Suspicious?

Mr. RICO. No. I think that I was trying to act as if I was facing serious time in jail and this was a very important thing for me to do, is to get this money into his hands so that the sentences could be reduced. I thought that he——

The VICE CHAIRMAN. So you were concerned about the sentence aspect as opposed to the order which had already been entered remitting the forfeiture?

Mr. RICO. Yes. That was the line that I was trying to use, that because of my wife's illness——

The VICE CHAIRMAN. So that Mr. Borders always had the assurance of getting the money because he had the additional leverage of the sentence reduction?

Mr. RICO. Yes, right.

The VICE CHAIRMAN. So that would explain his indifference, perhaps, or lack of push on it?

Mr. RICO. Well, and I also think that he probably was thinking about the time, as it turned out that he was having an affair that was going to honor him at that time. He probably was trying to work out how it could be conveniently done.

The VICE CHAIRMAN. OK. Thank you.

The CHAIRMAN. Further questions? Senator Durenberger.

Senator DURENBERGER. Mr. Rico, have you ever had reason to believe that Judge Hastings was not a party to this whole scheme that you were involved in?

Mr. RICO. I have tried to handle myself as if I was a robot. I was not trying to get involved in anything except accepting information, and I was trying to see whether or not this was going to be proven or disproven. I was not trying to be involved in making the case or unmaking the case. I was trying to stay neutral.

Senator DURENBERGER. When you went into your robotic state——

Mr. RICO. Right.

Senator DURENBERGER. I will characterize it as that.

Mr. RICO. Right.

Senator DURENBERGER. Were you informed that Mr. Dredge was personally familiar with Judge Hastings' involvement in this matter?

Mr. RICO. No, I was not aware of that. No.

Senator DURENBERGER. You were informed by Mr. Dredge that his personal familiarity with this scheme or whatever we might call it was only through Mr. Borders; is that correct?

Mr. RICO. Yes. Actually, I had very little contact with Dredge. The information I received was from the Bureau agents and not from Dredge himself. And then my contact with Dredge was to meet him at the FBI office and ride over to the airport.

Senator DURENBERGER. But just so I understand it, from the Bureau or from Mr. Dredge or from any other source, you never had any allegation or information that Judge Hastings was directly involved in this matter? It was Borders who said that Hastings was involved?

Mr. Rico. That was my——

Senator Durenberger. Is that the way it was presented to you?

Mr. Rico. Yes, right. Right.

Senator Durenberger. In your relationship with Borders, did you ever—and given your robotic state—did you ever have any inkling or any reason to believe that Borders did not have control over Judge Hastings' relationship to the disposition of the sentencing?

Mr. Rico. No, I did not.

Senator Durenberger. OK. Thank you.

The Chairman. Other questions from the committee? Senator Bond.

Senator Bond. Agent Rico, did the shifting of the understanding of the time when the order remitting the property would be handed down cause you any question as to the power of Mr. Borders over the judge? We just heard discussion of the tape in which you stated your impression that it was 10 days from the initial time, and Mr. Borders said, "No, it's 10 days from today's date."

Mr. Rico. Yes.

Senator Bond. Did that cause you any concern?

Mr. Rico. I was not concerned. The Bureau might have been concerned, but I was not concerned. I was just making phone calls.

Senator Bond. Based on your experience in twenty-four-and-a-half years of investigations, was the Fontainebleau episode sufficient to convince you of the power of Borders over the judge? You had initially started to ask that something be ordered. There were other elements that you did not pursue, making a judgment, apparently, at that time that they were not needed.

Mr. Rico. Well, my judgment was that I might be pushing too much if I asked for him to order something specific. But the contact at the Fontainebleau, that was important to me because I had been told that Borders indicated that somebody had claimed that he had access to Judge Hastings. And he said, "You pick a spot where I can"—this is what I was told. "You pick a spot where you want me to deliver him, and tell the other person that says that he is a friend of Hastings, have him pick a spot, and then see where he goes. And then you'll know who has control."

Senator Bond. Was the time period an important part of that agreed upon action?

Mr. Rico. I ~~don't be~~lieve the time was of the essence. I think it was just agreed upon as the time.

Senator Bond. No further questions, Mr. Chairman.

The Chairman. Senator Burns, did you have a question?

Senator Burns. Thank you, Mr. Chairman.

Mr. Rico, on your introduction to Mr. Borders, Mr. Dredge has testified that once that introduction was made, he just left or walked away. Now you have testified that he actually told Dredge to stay and they would talk after your visit with Mr. Borders.

A couple of questions: Was Mr. Dredge present when you and Borders were holding your conversation?

Mr. Rico. I met Borders on that first time on the seventh floor of the airport, where there is a restaurant there, there is a little area outside the restaurant. I was introduced to him by Dredge at that time. I suggested we have a cup of coffee, and he suggested we take a walk, and we went down in the elevator and left Dredge upstairs, and that was the—Dredge was not part of any of the remaining conversation.

Senator BURNS. Did you see Mr. Dredge meet with Mr. Borders after you and Mr. Borders had finished your conversation?

Mr. RICO. I think that we—my memory is that we came back upstairs—let me just check and see if it is reflected here.

[Pause.]

Senator BURNS. You concluded your conversations?

Mr. RICO. No, I can't remember—I can't remember whether I went back up to the seventh floor or not. Evidently I didn't, I don't see it here. I think I would have picked it up on the microphone if I had.

Senator BURNS. OK. I have no further questions. Thank you.

The CHAIRMAN. Are there other questions? Senator Bryan?

Senator BRYAN. Following up on Senator Burns' question, there has been much focus on House Exhibit 38B, to page 6, and that portion of the transcript that starts with WAB in the upper quarter of the page, "Within 10 days, he will give it to me, I will hold it until everything is done, that way you will know," et cetera. Do you follow where——

Mr. RICO. Yes.

Senator BRYAN [continuing]. I am directing you to?

Mr. RICO. Yes.

Senator BRYAN. Mr. Rico, I am a little bit confused from the examination. Was Mr. Dredge to be involved in some way in the future as a holder of these stakes for some period of time? I'm a little confused as to who is being referred to as to "give it to him."

Mr. RICO. I believe it was Mr. Borders' intention that Dredge would act as the middle person, and it was always my intention, if I could do it, was to cut Dredge out of the deal.

Senator BRYAN. So, your understanding, as you are piecing this together eight years after the fact——

Mr. RICO. Right.

Senator BRYAN [continuing]. That this portion of the transcript would refer to Borders trying to involve Dredge into the transaction as a holder of the steaks——

Mr. RICO. Yes.

Senator BRYAN [continuing]. And you're trying, in effect, to keep him out so that your communication is directly with Borders, and not by way of Dredge as an intermediary?

Mr. RICE. Absolutely, that's true.

Senator BRYAN. Thank you very much, Mr. Chairman.

The CHAIRMAN. Senator Lieberman.

Senator LIEBERMAN. Thank you very much, Mr. Chairman.

One question, Mr. Rico, to clarify part of this deal that you, as Mr. Romano, worked out with Borders. After you gave him the $150,000, the remaining $125,000 that day of the arrest, I take it that what you expected was that the three-year sentences would be voided in some way, and I am curious, and I may have missed something in all of this, once you gave him the money you had no more leverage over him.

Mr. RICO. That's right.

Senator LIEBERMAN. Was that a good deal for Frank Romano?

Mr. RICO. I could never tell that.

Senator LIEBERMAN. But that——

Mr. RICO. I never got that far.

Senator LIEBERMAN. But that is, just to——

Mr. RICO. Yes.

Senator LIEBERMAN. My understanding is correct, that what was going to happen, then, is that you had seen the forfeiture reduced——

Mr. RICO. Right.

Senator LIEBERMAN [continuing]. So, you had the appearance of a judge at the Fontainebleau.

Mr. RICO. Right.

Senator LIEBERMAN. You had seen the forfeiture reduced and then you gave him the other money, and presumably then the sentences were going to be eliminated.

Mr. RICO. You know, just opinion, the assets of the property that was returned was, I understand, something like $400,000 of property——

Senator LIEBERMAN. A substantial amount of money, right?

Mr. RICO [continuing]. So that it wasn't that bad a deal, from Romano's standpoint, to take a shot at getting the rest of it concluded, which would be the——

Senator LIEBERMAN. The end of the sentences——

Mr. RICO. Yes, right.

Senator LIEBERMAN [continuing]. Which presumably is what was bothering you when your wife was sick, that whole story.

Mr. RICO. Right.

Senator LIEBERMAN. OK. I guess maybe the other incentive here was that if he didn't deliver, he might have feared that you would have taken personal action against him, Borders might have?

Mr. RICO. It's possible.

Senator LIEBERMAN. OK. Thank you, Mr. Chairman.

The CHAIRMAN. Any further questions? Senator Pryor, did you have an additional question?

Senator PRYOR. Just one.

You had two meetings—let me stop right there. Prior to your first meeting with Mr. Borders at the airport, how long had you lived in the Miami area at that time?

Mr. RICO. Since 1970.

Senator PRYOR. So, you knew a lot of people in Miami, in that area, and I assume a lot of people knew, you know, acquaintances——

Mr. RICO. Yes.

Senator PRYOR [continuing]. Maybe golfing pals, church acquaintances——

Mr. RICO. Right.

Senator PRYOR [continuing]. Rotary Club, whatever, you knew a lot of people?

Mr. RICO. Right.

Senator PRYOR. At the airport on the two meetings in Miami, did you have plan two, in case one of your buddies or friends would have come up and said, "How are you doing there, Mr. Rico, how are you getting along? How's your wife"—or whatever? How did you go through this without having a great fear of being recognized while you were in the presence of Mr. Borders?

Mr. RICO. It was just a calculated risk, that's all I could say. I'm doing what the Bureau asked me to do, and that's how it came down. I was concerned that something like that could happen, but it didn't happen.

Senator PRYOR. I usually see people in airports that I don't want to see. I don't know whether you are faced with that same dilemma or not. [Laughter.]

Thank you, Mr. Rico.

The CHAIRMAN. Senator Leahy.

Senator LEAHY. I just want to make sure I understand. I don't have any questions now—I do have a couple of questions in mind, but I think they probably would fall more on what Mr. Anderson may be asking Mr. Rico later. He is coming back and——

The CHAIRMAN. Yes, next week. On Article XVI, dealing with disclosure of wiretap information, Mr. Rico, as I understand it, will be allowed to come back at that time.

Senator LEAHY. I think my questions are more appropriate for that time and I will withhold.

The CHAIRMAN. Are there other questions of this witness on this set of issues?

[No response.]

The CHAIRMAN. If not, we appreciate your testimony very much and you are excused.

Mr. RICO. Thank you.

The CHAIRMAN. Mr. Anderson?

Mr. ANDERSON. Mr. Chairman, I don't know that we need the formality, but technically I would ask, he has been one subpoena, to avoid the reserve, that he be released for now but held under subpoena for return upon direction.

The CHAIRMAN. Mr. Rico, you understand we are going to request you to come back when we reach that other portion of the case?

Mr. RICO. Fine. Do we have any approximate date?

The CHAIRMAN. We are hoping in the next 2 weeks.

Mr. RICO. All right. Thank you.

The CHAIRMAN. Thank you very much.

Would the House call its next witness, please.

Mr. BRYANT. The House at this time would call David Thomas, who will be examined by Mr. Gekas.

[Pause.]

The CHAIRMAN. Mr. Thomas, would you raise your right hand, please?

Do you, David Thomas, swear and affirm that the evidence you shall give in the case now pending between the United States and Judge Alcee L. Hastings shall be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. THOMAS. I do.

The CHAIRMAN. Please be seated.

TESTIMONY OF DAVID L. THOMAS

DIRECT EXAMINATION

Mr. GEKAS. Mr. Chairman and members of the committee. Please state your full name.

Mr. THOMAS. David L. Thomas.

Mr. GEKAS. And where do you live?

Mr. THOMAS. Fort Pierce, Florida.

Mr. GEKAS. How long have you lived in Fort Pierce?

Mr. THOMAS. About approximately 25 years.

Mr. GEKAS. Are you related to William Borders, who is mentioned in this case?

Mr. THOMAS. Yes, I am.

Mr. GEKAS. How are you related?

Mr. THOMAS. A cousin.

Mr. GEKAS. Would you explain that? Is that on your mother's side, your father's side?

Mr. THOMAS. My mother and his mother were two sisters' children.

Mr. GEKAS. All right. So, you have known him most of your life, for all of your life, is that correct?

Mr. THOMAS. Yes.

Mr. GEKAS. In 1981, we presume you were living in Fort Pierce, as you have stated, is that correct?

Mr. THOMAS. Yes, I was.

Mr. GEKAS. What happened during 1981 that involved your family?

Mr. THOMAS. Well, in 1981, in the month of September, our family had our first annual family reunion.

Mr. GEKAS. What were the dates, if you recall, of that reunion?

Mr. THOMAS. If I can recall, it was the weekend of September 11th through that weekend, which I guess lasted that Sunday.

Mr. GEKAS. All right. So, the 11th would be a Friday, is that correct?

Mr. THOMAS. If I can recall, yes, sir, Friday.

Mr. GEKAS. The 11th, 12th and 13th, that weekend?

Mr. THOMAS. Correct.

Mr. GEKAS. Did you yourself have anything to do with organizing that reunion and planning for it?

Mr. THOMAS. Yes, sir, I was the program director.

Mr. GEKAS. About when did you begin to notify or mail out invitations for this event to the members of the larger family?

Mr. THOMAS. Sir, I wasn't the secretary of it, that was handled by the secretary. I think in the mailing of the dates of the reunion, I think went out about six months prior to the reunion.

Mr. GEKAS. And do you know whether or not the invitations included one for Mr. Borders?

Mr. THOMAS. Yes, sir, I'm pretty sure that it did, yes.

Mr. GEKAS. And how many people ultimately attended that reunion?

Mr. THOMAS. Between roughly, I would say, 100 to 150.

Mr. GEKAS. You stated that Mr. Borders was one who appeared on the invitation list and was invited. Was any other member of the Borders family invited?

Mr. THOMAS. Now, Mr. Borders, he's not married, so, you know, he doesn't have a wife, so it would be directly to him and his mother.

Mr. GEKAS. All right. Now, where was Mr. Borders living at that time when he received the invitation?

Mr. THOMAS. As far as to my knowledge of knowing, 28 50th Street, NW., Washington, DC.

Mr. GEKAS. And where was his mother living?

Mr. THOMAS. At the same address.

Mr. GEKAS. All right. What events were planned for the reunion, if you can recall?

Mr. THOMAS. Well, that Friday we had the family gathering, and that Saturday we had the family picnic, and Sunday we had the family dinner.

Mr. GEKAS. During that weekend, did you see William Borders, your cousin?

Mr. THOMAS. Yes, I did.

Mr. GEKAS. How did it happen that you first came to see him?

Mr. THOMAS. I seen him at the West Palm Beach International Airport.

Mr. GEKAS. How was it that you went to the airport?

Mr. THOMAS. I picked him up from the airport that morning, I think it was.

Mr. GEKAS. What prompted you to go to the airport?

Mr. THOMAS. I was asked by his mother to pick him up.

Mr. GEKAS. All right.

At this point, Mr. Chairman and members of the committee, I would like to read into the record a stipulation. I inform counsel that will be Stipulation No. 62.

The CHAIRMAN. Is there any objection to that stipulation being admitted?

Mr. ANDERSON. You have got to give me a second to figure out what it is.

No, it will save a lot of time. Go ahead, no objection.

The CHAIRMAN. It will be admitted.

[Stipulation No. 62 was received in evidence.]

The CHAIRMAN. Go ahead and read it.

Mr. GEKAS. "62. On September 12, 1981, David L. Thomas, a cousin of Williams Borders, met Borders at the West Palm Beach airport."

Do you recall waiting for him at the airport for any period of time?

Mr. THOMAS. If my memory can—no, sir, I guess we both arrived—I almost arrived just when his flight was in——

Mr. GEKAS. All right.

Mr. THOMAS [continuing]. And that he was off the airplane.

Mr. GEKAS. And what did you and he then do?

Mr. THOMAS. We proceeded back to my car and we went back to Fort Pierce, which was about 60 miles from West Palm Beach.

Mr. Gekas. At this point, Mr. Chairman and members of the committee, I would like to read Stipulations 66 and 254—66 and 254.

Mr. Anderson. No objection.

The Chairman. Those stipulations will be admitted.

[Stipulation Nos. 66 and 254 were received in evidence.]

The Chairman. Go ahead and read them.

Mr. Gekas. Stipulation 66. "The drive by David L. Thomas and William Borders from West Palm Beach, Florida to Fort Pierce, Florida on September 12, 1981, took about an hour and twenty minutes."

Stipulation No. 264: "Fort Pierce is approximately 60 miles north of West Palm Beach, Florida."

Now, after you proceed in the automobile and went to Fort Pierce, to what spot did you and Mr. Borders go in Fort Pierce?

Mr. Thomas. We went to the address of 1407 Avenue M, that was the headquarters of the family reunion.

Mr. Gekas. And whose residence is that?

Mr. Thomas. Dolly Mae Lilton.

Mr. Gekas. And how is she related?

Mr. Thomas. Aunt.

Mr. Gekas. All right. And what did you do, then, following the arrival of yourself and Mr. Borders at the Fort Pierce residence?

Mr. Thomas. I dropped him off there at the house and I had to go to work later on that afternoon, and so I left and proceeded to work.

Mr. Gekas. Did you rejoin the reunion activities?

Mr. Thomas. I did later on that evening.

Mr. Gekas. About what time do you recall rejoining the activities?

Mr. Thomas. Between the hours of 6:00 and 7:00 p.m., that evening.

Mr. Gekas. When you arrived there, was it daytime or dusk or evening?

Mr. Thomas. Well, it was dusk. It wasn't dark or anything, you know.

Mr. Gekas. All right. Was Mr. Borders at the festivities when you returned to the reunion activities?

Mr. Thomas. No, he wasn't.

Mr. Gekas. Did you ever see him again during the course of the activities of the reunion, the remainder of that weekend?

Mr. Thomas. No, I didn't.

Mr. Gekas. You referred to his mother, your aunt or the relative of your mother's. Was she there when you returned from your personal business on that day?

Mr. Thomas. Yes, she was.

Mr. Gekas. And did you see her during the remainder of the weekend activities?

Mr. Thomas. Yes, I did.

Mr. Gekas. All right. I would now like to read stipulations numbered 255 and 256 into evidence.

The Chairman. Is there any objection to those stipulations being admitted?

Mr. Anderson. No objection.

The **Chairman**. They will be admitted.

[Stipulation Nos. 255 and 256 were received in evidence.]

Mr. **Gekas**. "255. Fort Pierce is approximately 60 miles south of Melbourne, Florida."

"256. Fort Pierce is approximately 115 miles from Orlando, Florida."

Mr. Chairman and members of the committee, we have no further questions of this witness.

The **Chairman**. Is there cross-examination of this witness?

Mr. **Anderson**. Very briefly.

CROSS-EXAMINATION

Mr. Thomas, I'm Terry Anderson. Have we ever met before, sir?

Mr. **Thomas**. No, sir, we haven't.

Mr. **Anderson**. Have we ever spoken?

Mr. **Thomas**. No, sir, we haven't.

Mr. **Anderson**. Have you been called to recant these matters under oath on a previous occasion? Were you ever called to testify before about the family reunion

Mr. **Thomas**. Yes, sir, during the trial of Judge Hastings.

Mr. **Anderson**. And who called you to testify at that time, sir?

Mr. **Thomas**. I'm trying to recall.

Mr. **Anderson**. Were you called on Judge Hastings' side of the case or on the prosecution side?

Mr. **Thomas**. OK. I was called on Judge Hastings' side of the case.

Mr. **Anderson**. And does the recollection you shared with the committee today, is it the same recollection that you shared with the jury back then?

Mr. **Thomas**. Yes, it is.

Mr. **Anderson**. You have lived in Miami a long time. Based upon your own exposure to him and what you know about him, what kind of man do you think Alcee Hastings is?

Mr. **Thomas**. No, sir, I have never lived in Miami.

Mr. **Anderson**. I'm sorry, you lived in south Florida. Do you have a view of what kind of man Alcee Hastings is? If so, would you share it with these people?

Mr. **Thomas**. To me, yes, I think Judge Hastings is a great man. He's one that I can look up to.

Mr. **Anderson**. Thank you, Mr. Thomas.

No further questions.

The **Chairman**. Is there redirect examination?

Mr. **Bryant**. No, Mr. Chairman.

The **Chairman**. I have no questions.

Senator Specter, do you have questions?

The **Vice Chairman**. No questions. Thank you.

The **Chairman**. Are there any questions from members of the committee?

Mr. **Pryor**. I have a quick question.

The **Chairman**. Senator Pryor.

EXAMINATION BY THE COMMITTEE

Senator **Pryor**. Mr. Thomas, when you picked Mr. Borders up at the airport, now this was in West Palm Beach, correct?

Mr. **Thomas**. Yes, sir.

Senator **Pryor**. And then you drove to Fort Pierce, Florida. Did Mr. Borders have any luggage?

Mr. **Thomas**. I can't recall if he did or not.

Senator **Pryor**. Did you have to wait for Mr. Borders, for example, at the place where the luggage came through from the airline to the luggage depot in the airport?

Mr. **Thomas**. I really can't recall. No, I can't recall.

Senator **Pryor**. Did Mr. Borders indicate that he was going to spend the entire weekend on your drive?

Mr. **Thomas**. I can't recall that, either.

Senator **Pryor**. Do you know if he had any hotel or motel reservations in the area for that particular weekend?

Mr. **Thomas**. No, sir, I can't recall that.

Senator **Pryor**. And then he got from the picnic area to, I believe it is Orlando, Florida, so says one of the stipulations. How far is Orlando from the place of the picnic or the family reunion?

Mr. **Thomas**. It is about 120 miles northwest, I think.

Senator **Pryor**. Did you know how he got, how Mr. Borders got from the reunion area or the picnic area to the Orlando Airport?

Mr. **Thomas**. No, sir, I don't.

Senator **Pryor**. Thank you.

The **Chairman**. Are there other questions? Senator Bond.

Senator **Bond**. When you picked up Mr. Borders or were sent to pick him up, was there any understanding or any information you received on how long he planned to be at the picnic?

Mr. **Thomas**. Did he say how long he was going to be there, is that what you are asking me, sir?

Senator **Bond**. Yes.

Mr. **Thomas**. No, sir, he didn't.

Senator **Bond**. Did he indicate to you any reason why he would not be there or that he was intending to leave shortly thereafter?

Mr. **Thomas**. Sir, he didn't say anything. In the first question that you asked me, no, and what you are saying now, it would still be no, you know, he didn't say nothing about how long or, you know, how short he was going to be there. He didn't say anything like that.

Senator **Bond**. No further questions, Mr. Chairman.

Senator **Lieberman**. Mr. Chairman?

The **Chairman**. Senator Lieberman.

Senator **Lieberman**. One question.

Mr. Thomas, you indicated a moment ago that you think Judge Hastings is a great man. Do you say that because you know him personally through your relationship with Bill Borders, or because you admire his public record?

Mr. **Thomas**. No, sir. I knew Judge Hastings—I didn't know him, but I have heard of him. I am a member of the Fraternal Organization of Elks, and when I first joined about 15 years, Judge Hastings had already been a member, and in our organization, you know, he was really—he was really an outgoing person, he was one to look up, he was on his way up in that organization. You know, he would come to our lodge, which I never did really get a chance to meet him right hand-in-hand, because I had just joined and he was on a different level than I was but, you know, I got a chance just to look at him and just to watch him, you know——

Senator LIEBERMAN. I understand. And your feeling about him hasn't changed as a result of the allegations that were made against him as part of this case?

Mr. THOMAS. No, sir. No, sir.

Senator LIEBERMAN. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Any other questions?

[No response.]

If not, is there any reason this witness cannot be excused?

[No response.]

Mr. Thomas, we appreciate your testimony very much. Thank you.

The House will please call its next witness.

Mr. BRYANT. Mr. Chairman, at this time the House would like to offer an offer of proof through our Special Counsel Alan Baron.

The CHAIRMAN. Mr. Baron, proceed.

Mr. BARON. Mr. Chairman, at this time the House would like to formally move into evidence certain specific prior testimony which was given in earlier proceedings related to this case and additional House exhibits and stipulations, the relevance of which has been established by the witnesses who have already testified.

First, the House moves into evidence at this time the testimony given under oath before the Eleventh Circuit Investigating Committee by three airline experts, Richard Lowe, William James Washington, and Laverne Boone. I would ask that the exhibits to their testimony previously filed with this committee also be submitted into evidence, and these are House Exhibits 17 through 22, 68 through 98, and 100 through 118.

The CHAIRMAN. Would you give those numbers once more, please?

Mr. BARON. These are House Exhibits 17 through 22, 68 through 98, and 100 through 118. The members of the Senate committee have copies of these exhibits, and I have the originals here in my hand which I would like to present to the clerk.

The CHAIRMAN. You are moving the introduction of the testimony of the airline experts at which proceeding?

Mr. BARON. They appeared before the Eleventh Circuit Investigating Committee hearings that were held in 1985.

The CHAIRMAN. And also the introduction of these designated exhibits?

Mr. BARON. That accompany their testimony.

The CHAIRMAN. Is there objection to the introduction of either the testimony or the exhibits?

Mr. ANDERSON. Mr. Chairman, we have preserved, I take it, our principal grounds for this kind of procedure. There is no specific objection to the introduction of those three witnesses' testimony or their records.

The CHAIRMAN. Those exhibits and that testimony will be admitted into evidence.

[The documents referred to were marked House Exhibit Nos. 17 through 22, 68 through 98, and 100 through 118 and were received in evidence.]

TESTIMONY OF RICHARD A. LOWE BEFORE THE INVESTIGATING COMMITTEE OF THE ELEVENTH CIRCUIT COURT OF APPEALS

VOLUME I—WITNESS LOWE

The **Witness**. I do.

The **Clerk**. Be seated, please, and state your full name for the record.

The **Witness**. Richard A. Lowe, L-O-W-E.

Judge **Godbold**. Mr. Lowe, before you begin your testimony, the committee calls to your attention that under the provisions of 28 United States Code, section 372(c)(14), and paragraph 12 of the governing rule for this proceeding adopted by the Judicial Council of the Eleventh Circuit, you are required to keep confidential the papers, documents and records of proceedings relating to the investigation pending before this committee.

Let me reiterate. Both the statute and the rule provide that you shall keep confidential the papers, documents and records of this proceeding.

The **Witness**. Yes, sir.

Judge **Godbold**. You may proceed.

Richard A. Lowe, called as a witness, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Webb:

Q. Mr. Lowe, by whom are you employed, sir?

A. Eastern Air Lines.

Q. In what capacity?

A. I'm the supervisor of ticket control and custodian of records.

Q. Can you give us a brief description of what your duties involve in that capacity?

A. As custodian of records, any passenger information, passenger records, reservations, flight coupons, those type of things are under my control.

Q. Do your duties include responding to requests for information by subpoena or otherwise?

A. Yes, they do.

Q. Are you generally familiar with the policies and procedures of Eastern Air Lines with respect to airline ticketing and reservations?

A. Yes, sir.

Q. Is that encompassed within your duties?

A. Yes, sir.

Q. Now, was Eastern Air Lines served with a subpoena in connection with this proceeding?

A. Yes, sir.

Q. And have you been designated by Eastern Air Lines to respond to that subpoena?

A. Yes, sir, I have.

Q. Have you brought with you those documents today?

A. Yes, sir.

Q. What I would like to do is go through the documents now and see what you have and ask you a few questions about them.

The first document you were asked to bring with you today, Mr. Lowe, is a ticket for Flight 176Y dated June 17, 1981, ticket number 0074481090387.

A. Yes, sir.

Q. Do you have that ticket with you today, sir?

A. Yes, sir, I do. A copy of it.

Q. Would you produce that for me, please?

Judge **Johnson**. What exhibit number is it?

Mr. **Webb**. This is not an exhibit number at this point, your Honor. This is within the grand jury records.

I will now show him the document we got from the grand jury. If it's the same, I would propose to mark this one as a new exhibit number.

By Mr. Webb:

Q. Do you also have a passenger reservation history with that ticket?

A. Yes, sir.

Q. I will show you now, Mr. Lowe, documents which bear the numbers on the bottom 010044 and 010045 and ask you if these are copies of the two documents that you have just produced today.

A. Yes, sir, they are.

Mr. **Webb**. Your Honors, with the committee's permission, I would propose that we mark the ticket, itself, as IC Exhibit 35-A and then the passenger reservation history as IC Exhibit 35-B.

Judge **Godbold**. All right. 35-A is a ticket. Give us a little more identification.

Mr. **Webb**. As soon as I mark it, I will do that.

Judge **Godbold**. All right.

35-A is the ticket?

Mr. **Webb**. Yes, sir.

Judge **Godbold**. What is the passenger information?

Mr. **Webb**. 35-B is the passenger reservation history for the flight in question.

Judge **Godbold**. All right.

Mr. **Webb**. These documents are not included in the packet before Your Honors because of the copying restrictions that we have.

By Mr. Webb:

Q. If I can show you now, Mr. Lowe, exhibit IC-35-A and ask you to identify that document, sir, and describe it for us, please.

A. This is a copy of an Eastern Air Line Ticket.

Do you want to know the passenger name flight information?

Q. Yes.

A. In the name of Mr. A. Hastings. It was for Eastern Flight 176 from Miami to Washington on the 17th of June, 1981 with a schedule return from Washington-Miami Eastern Flight 965 on the 18th of June, 1981.

Q. Is that a record that is kept by Eastern Air Lines in the ordinary course of its business?

A. Yes, sir, it is.

Q. Is it the regular practice of Eastern Air Lines to keep a record like that?

A. Yes, sir.

Mr. **Webb**. I would offer exhibit IC-35-A for the committee's consideration.

Judge **Godbold**. It will be received.

[Thereupon, exhibit number IC-35-A was tendered and received by the committee.]

Judge **Godbold**. Was the ticket used, or are you going to get to that?

Mr. **Webb**. I will get to that.

By Mr. Webb:

Q. Can you determine from exhibit IC-35-A if the ticket, itself, was actually used?

A. The number one flight coupon was used on Eastern Flight 176 on June 17, 1981 from Miami to Washington.

Q. And on what do you base that determination?

A. This is a copy from our microfilm.

When the tickets come into our accounting office, they come in from the various stations. They are sorted down by flight and then they are put on microfilm. Only used flight coupons are put on the microfilm.

Plus it also indicates, on the ticketed copy itself it shows flight 176Y with a seat number assigned.

At the time I pulled this record on October 28 of 1981 I did not find usage for the return coupon.

I would like to say the possibility of what can happen here is the return coupon was used on another air line. They have up to 6 months to bill us. I did not do a further check after October 28.

Q. Let me ask you. You are referring to a document that is attached to IC-35-A. Maybe if you could identify the attached document for us, please.

A. This is just a form that I use within the department when doing researach on tickets where I will list a ticket number or a name and give it to people to research by looking at microfiche by month to determine usage.

Q. Of that ticket?

A. Of this particular ticket number, yes, sir.

Mr. **Webb**. Judge Godbold, if we could mark that attached sheet as IC-35-C and then offer that for the committee's consideration.

Judge **Godbold**. It is admitted.

[Thereupon, exhibit number IC-35-C was tendered and received by the committee.]

By Mr. Webb:

Q. Is exhibit IC-35-C, Mr. Lowe, a record that is prepared by Eastern Airlines in the regular part of its business?

A. Yes, sir.

Q. Regular part of its business activities?

A. I prepare these.

Q. Is it part of your duties to request that type of information as evidenced by IC exhibit 35?

A. Yes, sir, it is.

Mr. WEBB. I would offer then IC exhibit 35 for the committee's consideration.

Judge GODBOLD. It's received.

[Thereupon, exhibit number IC-35 was tendered and received by the committee.]

By Mr. Webb:

Q. Exhibit IC-35-B, Mr. Lowe, can you identify that, please?

A. Yes, sir. That's a copy from our microfilm of a passenger name record or reservation history.

Q. Can you tell me what a passenger reservation history is?

A. OK. Set up in the computer are scheduled flights. Starts off with the flight information as far as scheduled departure time, scheduled arrival time.

As calls are called in for bookings on these particular flights, the input from the reservation agents is put in the computer for these particular flights.

After the flight date, it is put on microfilm, taken from a magnetic tape and put on microfilm and sent to my office for a five year retention.

Q. Does the flight reservation record then reflect the actual departure times of the aircraft and arrival times?

A. Only if I were to pull the first page of the particular flight in question. That would be the only way.

Q. So can you describe then what the record is overall, beginning with the first part and then continuing?

A. OK. The first page on any given flight, the top information would be the flight information as far as the times, out, off, on, in, that type of thing, any code for delays or that type of thing, anything to do with the actual operation of the flight as far as times go.

Q. And then is there a second part of the record?

A. Then you start going into the names of individuals that hold reservations on that flight for that day.

Q. And what does the record show with respect to those individuals?

A. It shows that the flight, the flights that they are holding reservations for, the time the reservation was made, any phone contact information that was given.

Q. Does it show just the reservation history with respect to that particular flight?

A. No, sir. It would show all reservations.

Q. Now, looking at IC exhibit 35-B, do you see on that a flight reservation history that relates to the ticket that we have marked as IC exhibit 35-A?

A. Yes, sir. I do have a reservation record in the name of A. Hastings.

Q. And that's the flight reservation history for A. Hastings for flight 176?

A. Yes, sir.

Q. Is exhibit——

Judge GODBOLD. Excuse me. Are we talking about June 17, 1981?

Mr. WEBB. Yes, sir, your honor.

Judge GODBOLD. Was the ticket used that date or do we know that?

The WITNESS. Yes, sir, it was used that date.

Judge GODBOLD. And this is from where to where?

The WITNESS. It was used from Miami to Washington National Airport.

Judge GODBOLD. All right. Thank you.

By Mr. Webb:

Q. Is exhibit IC-35-B kept by Eastern Airlines in the course of its regular business activities?

A. Yes, sir.

Q. And is the exhibit made as part of Eastern's regular activities?

A. Yes, sir, it is.

Mr. WEBB. I would offer exhibit IC-35-B for the committee's consideration.

Judge POINTER. I think 35-B has already been received.

Mr. WEBB. Has it already been received?

Judge POINTER. Yes.

By Mr. Webb:

Q. You said a minute ago that you could not determine whether there was a return in connection with the flight up to Washington as reflected by exhibits 35-A, B and C?

A. No, sir. When I checked that or had it researched on October 28th, there was no return shown on an Eastern flight.

Judge TJOFLAT. You are saying you don't know whether or not the ticket was used on a return flight?

The WITNESS. No, sir, I do not.

Judge TJOFLAT. Or some other flight?

The WITNESS. No, sir.

Judge TJOFLAT. It could have been?

The WITNESS. It could have been used on another airline.

Judge TJOFLAT. Or on Eastern?

The WITNESS. It could have been used on Eastern after October 28th.

Judge TJOFLAT. On another flight?

The WITNESS. On another flight, yes, sir.

By Mr. Webb:

Q. Is there any period of time in which the ticket is valid?

A. Tickets are valid for 1 year.

Q. So if it were used on another airline flight——

A. But other airlines have up to 6 months to return that coupon to us, so I at this point or, as I said, as of October 28th I did not show the return coupon being used either on Eastern or another airline, being refunded or reissued.

Q. But at that time the 6-month period for another airline to return the coupon had not expired?

A. No, sir.

Q. That was in connection with your response to the grand jury records that you make that search?

A. Yes, sir.

Q. In October of 1981?

A. Yes.

Judge TJOFLAT. You are saying we don't know what happened to the ticket after 6 months?

The WITNESS. No, sir. What I'm saying is I don't know what has happened to that ticket to this day.

Judge GODBOLD. But that information is still available about what happened on the return ticket if it was used after October, isn't it?

The WITNESS. Yes, sir. I can check microfiche and determine that.

Judge GODBOLD. We had better find that out.

Does the ticket reflect—does any of the information reflect the identity of the person who actually used the ticket?

The WITNESS. The name that is on the ticket is Mr. A. Hastings. We do not require identification to board a domestic flight.

By Mr. Webb:

Q. So what you can say from the ticket is that Mr. A. Hastings held the ticket, but you can't determine from that who actually used the ticket?

A. No, sir, I cannot.

Q. You were also asked, Mr. Lowe, to bring with you documents relating to ticket number 0074476621095, a ticket for a flight on July 17th, 1981 in the name of A. Hastings.

Do you have that with you, sir?

A. Yes, sir, I do.

Judge JOHNSON. What number is that, Mr. Webb?

Mr. WEBB. This will be IC-48 and IC-49.

By Mr. Webb:

Q. Do you have coupons one and two for that?

A. Yes, sir, I do.

Q. Let me show you the original tickets that were gathered earlier and ask you if you can compare those to the records that you are producing today and if they are the same.

A. Yes, sir, they are.

Mr. WEBB. I would offer for the committee's consideration IC exhibits 48 and 49.

Judge GODBOLD. It will be received.

[Thereupon, exhibits number IC-48 and IC-49 were tendered and received by the committee.]

By Mr. Webb:

Q. Now, can you tell me what IC exhibit shows?

A. This is the number one flight coupon again for Mr. A. Hastings, and it shows Miami—it's for a Miami to Washington flight, Eastern flight 158, and my records reflect that that was used on July 17th, 1981.

Q. Can you make that determination that the ticket was used on July 17th, 1981 from the ticket, itself?

A. No, sir. I do not see that date on there other than it was scheduled for that day but there is no use stamp.

However, when I checked my microfiche, that is the date that was shown.

Q. And this you are referring to, your record of requested information?

A. Right.

Q. Is there a particular name for this record?

A. Believe it or not, it's called an investigation request.

Mr. **Webb**. We will mark the investigation request then as IC exhibit 49-A.

By Mr. Webb:

Q. This is the same request, same type of form as we previously marked as IC exhibit 35-C?

A. Yes, sir. That's correct.

Mr. **Webb**. I would offer IC exhibit 49-A for the committee's consideration.

Judge **Pointer**. 49-A is tendered.

Judge **Godbold**. It will be received.

[Thereupon, exhibit number IC-49-A was tendered and received by the committee.]

By Mr. Webb:

Q. You did testify that the ticket reflected by IC-49 was used on July 17th?

A. Yes, sir.

Q. Looking at exhibit IC-48, what is that ticket, sir?

A. That is the number two flight coupon, the return coupon from Washington to Miami and again in the name of Mr. A. Hastings, and my records reflect that it was used on flight, Eastern flight 965 from Washington to Miami on July 20th, 1981.

Judge **Tjoflat**. Flight what?

The **Witness**. 965.

By Mr. Webb:

Q. If you look at the ticket, itself, IC-48, is the ticket for a different return flight?

A. Yes, sir.

Q. What flight is the ticket for?

A. The ticket was originally scheduled for flight 197 on July 20th.

Q. Can you determine from the ticket what airport flight 197 departs from?

A. Reflects National.

Q. And what's the destination?

A. Miami.

Q. What time does the ticket show flight 197 leaving National Airport on July 18th, 1981?

A. July 20th.

Q. 20th.

A. 5:30 p.m.

I brought a schedule with me for that time period if you would like for me to check that.

Q. Do you have that schedule with you?

A. Yes, sir.

Q. Would you produce that schedule, please?

Before he—you have produced a schedule—well, can you identify what the schedule is, sir?

A. It's just an Eastern issue timetable that covered that July 2nd, 1981.

Q. Through to when?

A. The next timetable was effective September 9th, 1981.

Mr. **Webb**. Could we mark, please, the timetable effective July 2nd, 1981 as Exhibit IC-49-B?

I would offer that for the committee's consideration.

Judge **Godbold**. It is received.

[Thereupon, exhibit number IC-49-B was tendered and received by the committee.]

By Mr. Webb:

Q. Can you determine from IC-49-B what the scheduled departure was of flight 197 on July 20th, 1981?

A. It was 5:30 p.m.

Q. 5:30 p.m.?

A. Yes, sir.

Q. Now, you also said based on exhibit IC-49-A that in fact the passenger holding ticket IC-48 did not fly on flight 197?

A. That's right. My microfiche records show it was used on flight 965 which was scheduled to depart Washington at 1:50 p.m.

Q. And what's the destination of flight 965?

A. Miami.

Q. So it left about three hours, 3½ hours earlier than 197?

A. Right. 1:50 instead of 5:30.

Q. I notice on IC-48 there's a stamp in blue "used July 20th." What does that indicate?

A. That's indicating that it was used. Some agents use the stamp and others don't, and I have had flight coupons where they do not use a stamp, but normally you would find a used stamp.

Q. The subpoena also called for you to produce, Mr. Lowe, a ticket for September 11th, 1981, number 0074455484—sorry. Excuse me. 548497. Four coupons.

Do you have those coupons with you today, sir?

A. I just have the number one flight coupon.

Q. You do not have any other coupons relating to that flight?

A. No, sir, I do not.

Q. Mr. Lowe, I show you what's been marked as IC exhibit 50 and ask if that document is the same as the documents you produced here today in response to the subpoena.

A. Yes, sir, it is.

Q. Could you identify for me, please, exhibit IC-50?

A. It's an Eastern Airlines issued ticket. It's a ticket by mail. It was sent off from our Chicago office. It was issued on September 3rd, 1981 in the name of Mr. A. Hastings. It was four coupons. Scheduled for Eastern flight 176 on the 10th of September from Miami to Washington.

Allegheny flight on the 13th of September from Washington to Harrisburg, PA.

Flight coupon three would have been Allegheny flight on the 14th of September from Harrisburg to Pittsburgh.

Number four coupon; flight on the 14th of September from Pittsburgh to Fort Lauderdale.

Q. Would coupons two through four then be with Allegheny—coupons two and three be with Allegheny?

A. No. If they had been used on Allegheny they would be returned to us in their billing process. Again, in this particular case, on October 28th, I was——

Judge Godbold. Excuse me just a minute. You all are getting ahead of us, Mr. Webb.

Mr. Webb. OK.

Judge Godbold. Or ahead of me.

I have got IC-50 ticket sold by mail from Chicago issued September 3rd for September 10, for September 11.

Mr. Webb. September 10.

Judge Tjoflat. September 3rd or September 1?

Mr. Webb. The ticket was issued on September 3rd.

Judge Godbold. For travel when?

Mr. Webb. The first travel on the ticket is September 10.

Judge Godbold. Was it used on September 10 or do we know?

Mr. Webb. We do know, and that's the next record.

Judge Godbold. It was used?

Mr. Webb. It was used.

Judge Godbold. The subsequent tickets, let's take them up. What was the next leg?

The Witness. From Washington to Harrisburg, PA, on the 13th of September.

Judge Godbold. All right.

Judge Tjoflat. Aboard what?

The Witness. Allegheny.

Judge TJOFLAT. Flight——

The WITNESS. Scheduled for Allegheny flight 719, I believe if I'm reading correctly.

Judge TJOFLAT. Was that used?

The WITNESS. No, sir. I did not find usage. Well, when I say I did not find usage, looking at my investigation request that I put out on October 28th, I was not looking for usage for the other coupons.

Judge TJOFLAT. Do you know whether it was used or not?

The WITNESS. No, sir, I do not know.

Judge TJOFLAT. Was it used as of October 28th?

The WITNESS. No, sir. I did not check for that——

Judge TJOFLAT. We don't know if it was used?

The WITNESS. No, sir, we do not.

Judge GODBOLD. Just a minute.

Judge TJOFLAT. There's another leg.

Judge GODBOLD. All right. From Harrisburg where did he go? Back to D.C.?

Mr. WEBB. Pittsburgh. This is according to the ticket.

Judge GODBOLD. I understand that. Washington to Harrisburg and then Harrisburg to Pittsburgh?

The WITNESS. Yes, sir. On the next day from Harrisburg to Pittsburgh on September 14th, Allegheny flight 169 was the schedule.

Judge GODBOLD. All right.

Judge TJOFLAT. Used?

The WITNESS. No, sir. I have no records of usage.

Judge GODBOLD. Don't know?

The WITNESS. Don't know.

Judge GODBOLD. And then Pittsburgh to where?

The WITNESS. To Fort Lauderdale.

Judge GODBOLD. OK.

Judge TJOFLAT. What day?

The WITNESS. September 14th, Eastern flight 739.

Judge GODBOLD. Used?

The WITNESS. No, sir. I do not show that as being used.

Judge TJOFLAT. You don't know whether it was or not?

The WITNESS. It was not used on Eastern in the month of September.

Judge GODBOLD. OK.

Mr. WEBB. I have lost track whether IC-50 has been accepted or not.

Judge GODBOLD. If it is not, it is accepted.

[Thereupon, exhibit number IC-50 was tendered and received by the committee.]

By Mr. Webb:

Q. Now, you also were asked to bring a reservations record in connection with IC-50?

A. Yes, sir.

Q. Do you have that record with you today?

A. Yes, sir, I do.

Q. I'm going to show you what has already been marked as IC exhibit 51 and ask if that is the same as the records you have brought today.

Judge TJOFLAT. Which record he brought today?

Mr. WEBB. The reservation records he's brought today in connection with the ticket that we have marked as IC-50.

Judge TJOFLAT. IC-51 is a reservation record?

The WITNESS. Yes, sir, it is.

By Mr. Webb:.

Q. Can you identify IC-51 for me, please?

A. This is a reservation record for—the particular flight on this one is flight 177 on the 14th of September from Washington to Miami.

One of the individuals on this record is the name of A. Hastings showing the four flights that we just discussed. Well, I say showing the four flights. This is the final flight on the 14th of September, and what we do is take a copy of the last flight because if there are any changes in the reservation record they will reflect in the last, on the last flight, and there were changes in this particular case.

Judge TJOFLAT. Judge Hastings took flight 177 on the 14th of September?

The WITNESS. No, sir. He had a reservation for that flight. I'm saying that he had a reservation and that was the last flight, Washington to Miami on the 14th of September. I still do not show that particular flight being taken.

Mr. WEBB. I would offer at this point and then I will go into this, but I offer at this point IC-51 for the committee's consideration.

Judge GODBOLD. It's received.

[Thereupon, exhibit number IC-51 was tendered and received by the committee.]

By Mr. Webb:.

Q. Now——

Judge O'KELLEY. Let me ask the witness this. Would the computer printout number 51 that shows the return flight from Washington to Miami, return segment, would that have been subsequent to the issuance of the ticket that that change was made?

The WITNESS. Yes, sir.

These changes were made after, and I have dates here when the changes were made in the reservation record.

As I explained, the ticket read Pittsburgh to Fort Lauderdale on the 14th. The final reservation that I show was Washington to Miami on the 14th of September.

By Mr. Webb:.

Q. Looking at exhibit 51, can you determine the date on which exhibit 51 was running?

A. Yes, sir.

Q. The date on which the exhibit, itself, was actually prepared. Was that in the upper right-hand corner?

A. September 16th, 1981.

Q. So that would have been after the flight that was reflected on the ticket as September 11th? September 10th. Excuse me.

A. Yes, sir. This is the most current reservation information.

Q. Now, looking at exhibit 51, there are four lines next to the name Hastings, A. that are a little further to the left than the other information next to his name. Do you see what I'm referring to?

A. The flight numbers?

Q. Yes, You see flight number 176Y, Eastern flight. Then it looks like an Allegheny flight 716 and another Allegheny flight 730 and another Allegheny——

A. No. That's an Eastern flight.

Q. Or Eastern flight 177.

A. Right.

Q. What do those four flights represent on this record?

A. This record is showing on those four flights for the itinerary, the dates shown, that A. Hastings was holding confirmed space on those four flights.

Q. And that would be the most recent updated record that Eastern has with respect to the ticket that we have marked as exhibit 50?

A. As far as holding confirmed space, that is correct.

Q. Now, can you determine from exhibit 51 on what day that exhibit 50, the ticket, was used to fly from Miami to Washington?

A. Would you repeat that, please?

Q. Can you determine from exhibit 51 the date on which exhibit 50, the ticket, itself, was used for the flight from Miami to Washington?

A. I can only cite that it was scheduled for flight 176 the 11th of September, 1981 from Miami to Washington.

However, my investigation request for that particular ticket number does reflect that it was used on that flight and date.

Q. Well, and the ticket, itself, exhibit 50, has some handwritten notation on it as well, does it not?

A. It shows flight 176Y but there is no date.

Q. It shows a seat assignment as well, too, doesn't it?

A. 23-A is the seat.

Q. And that would indicate that the ticket was used?

A. Yes, sir.

Judge GODBOLD. May I stop you there?

We are not talking about the first ticket, first coupon of the ticket that was booked to go from Miami to Washington on September 10.

Mr. WEBB. That's correct.

Judge GODBOLD. And as best we can tell was used September 11th.

Mr. WEBB. That's correct.

Judge GODBOLD. That airplane took off from Miami and went nonstop to Washington?

The WITNESS. Yes, sir. I believe that's nonstop.

Judge GODBOLD. Is there any way it would have stopped at Albany, Georgia.

The WITNESS. No, sir. No way.

Judge GODBOLD. Have you got an Eastern facility at Albany, Georgia?

The WITNESS. Back in 1981—if I can look at my timetable I can——

Judge GODBOLD. Would you look at that?

By Mr. Webb:

Q. Would you refer to IC-49-B?

I show you, Mr. Lowe, what I have marked as exhibit 51-C. Would you identify that?

A. Yes, sir. That's an Eastern timetable effective September 9th, 1981.

Mr. WEBB. I would offer exhibit 51-C for the committee's consideration.

Judge GODBOLD. It's received.

[Thereupon, exhibit number 51-C was tendered and received by the committee.]

By Mr. Webb:

Q. From exhibit 51-C can you determine if Eastern had a facility at Albany, Georgia?

A. No, sir, I do not show——

Judge TJOFLAT. That's effective to September what?

The WITNESS. September 9th, 1981.

Judge TJOFLAT. Backing up one point, you are saying beyond any question that the first ticket mentioned on IC-51, the Eastern Air Lines 176 nonstop Miami to Washington, was used on that date?

The WITNESS. Was used on September 11th, 1981.

Judge TJOFLAT. On that flight?

The WITNESS. On that flight, yes, sir.

Judge TJOFLAT. All right.

By Mr. Webb:

Q. Now, you were also asked in connection with this subpoena to bring the flight operations record for flight 0176 on September 11th.

Do you have that document with you, sir?

A. Yes, sir.

Q. I show you what I have already marked as IC-52 and ask if that's identical to the documents you brought here today.

A. Yes, sir, it is.

Mr. WEBB. I offer exhibit 52 for the committee's consideration.

Judge TJOFLAT. IC-52?

Judge GODBOLD. It's received.

[Thereupon, exhibit number IC-52 was tendered and received by the committee.]

By Mr. Webb:

Q. Can you tell me what exhibit 52 shows, please, Mr. Lowe?

A. The top shows the flight information for Eastern's flight 176 on the 11th of September, 1981, from Miami to Washington.

Q. Does that show the actual departure time from Miami International Airport for flight 176 on September 11th?

A. Yes, sir, it does.

Q. And what was that departure time, sir?

A. Now, do you want the time out from the gate or off of the runway?

Q. Let's take out from the gate.

A. Because I have got all kinds of times in this record.

Q. Let's take out from the gate.

A. The gate closed 5:50 p.m.

Q. And where are you looking for to determine that?

A. Down in the lower——

Q. Ask you speak up so the committee can hear you.

A. In the third line up from the bottom of that record.

Judge TJOFLAT. Third line from the bottom?

The WITNESS. Yes, sir. Where you see to Miami and 2204 Z slash out 5:50 p.m.

Judge TJOFLAT. Where is that on that?

Mr. WEBB. It's in the upper part of the record, Judge.

The WITNESS. Left-hand corner.

Judge TJOFLAT. Says o-f-f 6 p.

The WITNESS. Right. That is off the runway.

Judge TJOFLAT. Where do we find off the gate?

Mr. WITNESS. Go to the left of that.

Judge TJOFLAT. You can barely see it. 5:50. Says out.

Mr. WITNESS. Out.

Judge TJOFLAT. Out means 5:50?

Mr. WITNESS. Yes, sir. out, and next to that is 5:50 p.m.

By Mr. Webb:

Q. That then is when the gate was closed for this flight?

A. That's correct.

Q. And 6:00 o'clock p.m. was when the airplane took off from the runway?

A. That's correct.

Q. Does exhibit 52 also show——

Judge TJOFLAT. It left the gate at 6:00 p.m.? It left the runway at 6:00 p.m.?

The WITNESS. Yes, sir.

Judge O'KELLEY. Is that zebra?

The WITNESS. No, sir. That is local time.

Judge O'KELLEY. That is local?

Judge TJOFLAT. Eastern Daylight Time.

The WITNESS. Yes, sir. That's correct.

Judge TJOFLAT. When did it arrive in Washington?

By Mr. Webb:

Q. Does this 52 show the arrival?

A. Yes, sir. It shows on the runway at 8:00 p.m.

Judge TJOFLAT. Where is that? Right underneath the 5:50? Right?

The WITNESS. That's correct. The second line down from that shows "on, 8:00 p.m.; in, 8:04 p.m." The flight was two hours and four minutes late arriving.

Judge TJOFLAT. Runway at Washington at 8:00 o'clock p.m.?

The WITNESS. 8:00 p.m., yes, sir.

Judge TJOFLAT. Two hours late?

The WITNESS. Yes, sir. Two hours and four minutes late.

By Mr. Webb:

Q. Does exhibit 52——

Judge TJOFLAT. And at the gate at 8:04?

The WITNESS. Yes, sir. That's correct.

By Mr. Webb:

Q. Does exhibit 52 show any intermediate stops on the flight from Miami to National Airport?

A. No, sir. As a matter of fact, it shows it as being nonstop.

Q. And if that were a flight with an intermediate stop, would it appear on a record similar to exhibit 52?

A. It would appear on this record if there were other stops.

Judge TJOFLAT. What is the record that he has been referring to that tells him that A. Hastings was on that flight?

By Mr. Webb:

Q. You have got your investigative report.

Judge TJOFLAT. What is the exhibit that says that A. Hastings was on this flight?

The WITNESS. I have IC-50 which is the flight coupon.

Judge TJOFLAT. IC-50?

The WITNESS. Yes, sir.

Judge TJOFLAT. Just a minute.

Flight ticket?

The WITNESS. Yes, sir. That's the ticket.

Judge TJOFLAT. How do you know from that ticket that he was on the flight?

The WITNESS. Associated with that is my investigation request.

Judge TJOFLAT. What is that number?

Mr. WEBB. That's not numbered at this point.

We can number that as IC-52-A.

Judge TJOFLAT. The two of them together say he was on a flight?

The WITNESS. Yes, sir. This ticket was used on that flight on that date.

Judge TJOFLAT. Is 52-A a grand jury matter?

Mr. WEBB. 52-A is not a grand jury matter.

Judge TJOFLAT. Do we have copies for us?

Mr. WEBB. 52-A is a document that he brought here with him today, so we will get copies for the committee, but we did not have those until his morning.

This is this investigative report which I would offer for consideration.

Judge TJOFLAT. 52-A is the investigative report that covers all four coupons or flights or whatever you want to call them, the four flights on that ticket?

The WITNESS. If I can see that again. I'm not sure that I requested to have all coupons checked.

Judge TJOFLAT. You have got coupon two "no usage," and you have got nothing for the other two.

The WITNESS. OK. Well, I have the no usage line drawn but two of those coupons were not supposed to be used on Eastern anyway.

What I'm saying is I did not check on October 28 for the other coupons other than the return on Eastern on the 14 of September been used it would have shown up to me on this report.

Judge TJOFLAT. At this date, can you determine whether those two, those other three coupons were used?

The WITNESS. It would take some time, but I can do it.

Judge TJOFLAT. You can find out and find out whether they were used?

The WITNESS. If they were used, yes, sir.

Judge GODBOLD. We are going to need that, Mr. Webb.

Mr. WEBB. We will get that.

By Mr. Webb:

Q. Mr. Lowe, can you also determine, looking at exhibit 50 and exhibit 51, can you determine from the two of those together that in fact the ticket in the name of A. Hastings marked as exhibit 50 was used on September 11 to fly from Miami International Airport in Washington?

A. Well, the reservation record again calls for the 11th of September, Eastern's flight 176, but it is actually my investigation request that is telling me that it was actually used.

Q. But the reservation record is the most recent record you have of what ticket was being held or what reservations were being held under this ticket exhibit 50?

A. That's correct. The reservation record reflects the 11th of September.

Q. That's the most recent reservation for the ticket exhibit 50?

A. Yes, sir.

Q. And you see on exhibit 50 in red ink the flight number and an assigned seat?

A. Yes, sir.

Q. And the original of exhibit 50 was found in the files of Eastern Airlines. Is that right?

A. Yes, sir.

Q. Which would indicate that the ticket was used?

A. Yes, sir.

Q. So based on the ticket and your passenager reservation history, does it show that the ticket was used on September 11th to go from my Miami to National?

A. That is the flight we found it on, the 11th of September.

Judge TJOFLAT. What does the handwritten stuff on exhibit 50 mean? 176Y. Who wrote that on?

The WITNESS. That would have been the gate agent.

Judge TJOFLAT. The gate agent?

The WITNESS. Yes, sir.

Judge TJOFLAT. Showing it was used on that flight?

The WITNESS. Yes, sir.

Judge TJOFLAT. What does X-1 mean?

The WITNESS. That I can't tell you.

Judge TJOFLAT. What does 9 mean?

Mr. WEBB. I think that's 119 on the original.

Judge TJOFLAT. What does 23-A mean?

The WITNESS. That's the seat number.

Judge JOHNSON. Might I ask a question?

I notice you testified the flight coupon reflects that the reservation was made from Chicago.

The WITNESS. No, sir. The ticket was issued, mailed from Chicago.

Judge JOHNSON. Mailed from Chicago?

The WITNESS. Yes, sir.

Judge JOHNSON. How far in advance of its use was it mailed? Can you tell?

The WITNESS. The ticket was issued on September 3rd, 1981.

Judge TJOFLAT. Mailed that day?

The WITNESS. I will have to look at my record and see if it shows that.

Judge JOHNSON. Does it show how it was paid?

The Witness. Yes, sir. It shows a form of payment. I believe that's a visa card in the name of Alcee L. Hastings.

By Mr. Webb:

Q. Could you tell us what record you are looking at to determine this?

A. The reservation record. I wanted to determine the date that it was mailed.

Q. IC–51?

A. Yes, sir.

Judge Godbold. Why would a ticket have been issued by mail from Chicago? What would be the circumstances that would call that into play?

The Witness. That is our basic form for mailing tickets. The majority of them come out of Chicago. The computer is tied into that facility at Chicago.

Other areas can mail out tickets. I'm not saying that's the only one.

In this particular case, it went to Chicago to be mailed.

Judge Tjoflat. When would the reservation have to have been made to get it through Chicago?

The Witness. Would you repeat that, please?

Judge Tjoflat. When would the reservation have to have been made to get the ticket out of Chicago by the 3rd of September?

The Witness. The 25th of August, I believe.

Yes, sir. The 25th of August.

Judge Tjoflat. And that's for all four flights indicated on the ticket?

The Witness. Yes, sir. As of September 3rd, those are the flights that he held confirmed.

Judge Tjoflat. It was made on August 25?

The Witness. August 25, yes, sir.

Judge Tjoflat. By telephone?

The Witness. Yes, sir, received a phone call.

Judge Tjoflat. Where?

The Witness. Came into our Miami general sales at—if you will bear with me. I have to convert the Greenwich mean to daylight savings. 3:29 p.m. Giving a phone contact or business contact of area code 306–350–4289.

Judge Godbold. Give me that number again.

The Witness. Area code 305–350–4289. Showing that as a business contact.

In addition to that, a home contact was given as area code 305–731–8176, and we received this information from Betty.

Judge O'Kelley. Is all of that material where you are reading there on the right-hand side of exhibit 51——

The Witness. Yes, sir.

Judge O'Kelley [continuing]. Is that the entire reservation history on this?

The Witness. Yes, sir. It goes down——

Judge O'Kelley. Could you translate it to us then?

The Witness. I have just given you the phone contact.

The ticketing that you see there in brackets shows 3 September, and that's the date the ticket was issued.

The next line is basically dealing with the fare. You can see the $453 which is reflects on the ticket, itself.

Judge Tjoflat. Where do you see the 453?

The Witness. On the third line down over at the far right-hand side.

Judge Tjoflat. I see it.

The Witness. OK.

Judge Tjoflat. The $400 means the one leg of it, I suppose, or the tax?

The Witness. It shows a Y28 fare. I'm looking at the ticket now to see if that's——

Judge Tjoflat. The $400 before that, that must be before tax.

The Witness. I'm looking at the ticket, and it shows the fare was four thirty-one forty-two with a tax of twenty-one fifty-eight for a total of four fifty-three.

Judge Tjoflat. what does R-M-K-S mean?

The Witness. Is that—oh, remarks.

Again, just putting fare information in there, I will be honest with you. I don't know what the $400 is referring to. I do know that the four fifty-three is the total fare paid for that ticket.

Judge O'Kelley. Does this history show when the various changes were made in the reservations?

The Witness. Yes, sir, it does.

By Mr. Webb:

Q. Does this history show changes in the reservation prior to the issuance of the ticket?

A. I'm sure there are some in here that were prior, and then of course there has to be——

Q. Were there changes subsequent to the issuance of the ticket?

A. Yes, sir. If I can take it—and bear with me here. As an example, when you come down and you see M–I–A dash A–S dash S–S 1911 Z, that's Miami agency sale on the 28th of August at 3:11 p.m.

We were cancelling flight 190 form Miami to Washington on the 11th of September which means that on August 25th that flight has to have been scheduled at that time, so what we are looking at there is a cancellation of that, Eastern's flight 190 on the 11th.

If you go to the next line, we are going to assign the A–S that you see there, Eastern 0198, Miami-Washington on the 10th of September.

So at one point in time, we had reservations for the 10th of September on flight 198. Not 176 at this point.

Judge Tjoflat. That was after he had bought the ticket?

The Witness. That was on August 28th.

Judge Tjoflat. That was after he ordered the ticket?

The Witness. It was after he ordered, yes, sir, but before we mailed it out.

By Mr. Webb:

Q. Did you misspeak when you said flight 198? Did you mean flight 190?

A. No. He canceled 198 Miami to Washington. Or someone. The secretary in this case.

Let me get on the right line here.

No. That was received from the passenger. I'm sorry.

It is flight 198 though that got assigned on the 10th of September, Miami to Washington, so on August 28th we were assigned flight 198—we were cancelling flight 190 and assigned flight 198 on the 11th of September, changing it to the 10th of September. That transpired on August 28th.

The next line down where you see T–P–A, Tampa, that's agency sales on the 31st of August at 4:34 p.m. We are now cancelling the 198 on the 10th of September that we had scheduled on the 28th of August, and we are cancelling—we were cancelling 197 Washington to Miami on the 14th and there—on 31 August is when we rebooked Eastern's flight 176 on the 10th of September. That's what wound up on the ticket.

Judge Tjoflat. I see the——

The Witness. That happened on the 31st of August.

Judge Tjoflat. I don't see the 11th. I see 197. What's that?

The Witness. That was being canceled, Washington to Miami on the 14th of September, and if you go to the next line down and come across, you will see the A–S which means assigned Eastern's 0176, Miami to Washington, 10 September.

That's what was actually on the ticket when it was mailed out, 176, 10 September.

Judge Tjoflat. What line is it?

The Witness. Did you find the Tampa?

Mr. Webb. I can show you.

He's showing the one where it shows HK 012.

Judge Tjoflat. HK 012, 176, 10 September.

The Witness. Right. That was done on the 31st of August.

Judge Tjoflat. He canceled that one?

The Witness. He was booking that one.

Judge Tjoflat. He was booking it. The same flight number a day earlier?

The Witness. Yes, sir.

Judge Tjoflat. He's starting off on 176 the 11th.

Mr. Webb. But that's the flight that shows up on the ticket.

Judge Tjoflat. That's on the ticket; 176, 10 September is on the ticket.

The Witness. Yes, sir.

So on August 31, we have a reservation for Eastern's flight 176, Miami to Washington, on the 10th of September.

On the first of September we had some more cancellations. The Allegheny flight from Harrisburg to Washington on the 14th. We were canceling flight 197, Washington to Miami on the 14th.

At that time we were going to—we rebooked Allegheny from Harrisburg to Pittsburgh on the 14th of September, and we also booked Eastern's flight 739 from Pittsburgh to Fort Lauderdale on the 14th of September.

This all transpired, was received from Betty on September 1, 1981.

Judge TJOFLAT. How do you get him back on the 11th?

The WITNESS. OK. I'm going down this now to see where——

Judge TJOFLAT. There's Eastern 176 Miami on September 11th.

The WITNESS. On the 10th of September we canceled 176—on the 10th we canceled flight 176 on the 10th.

We should have booked—let me keep reading this.

By Mr. Webb:

Q. Can you tell at what time you canceled 176 the 10th?

A. 7:45 a.m.

Q. You canceled flight 176 for September 10?

A. Yes, sir.

Q. And to what flight did you assign him at that time?

A. At that time we were assigning Eastern's flight 200 from Miami to Washington on the 11th of September, scheduled to depart——

Judge TJOFLAT. Change it to what now?

The WITNESS. The record shows Eastern's flight 200 on the 11th of September.

Judge TJOFLAT. At what time?

The WITNESS. Scheduled to depart at 6:50 p.m. by Mr. Webb.

Q. Getting in Washington at what time?

A. Scheduled into Washington at 9 p.m.

The next line down where it's got Miami dash G–S dash A–1, that 1459 Z. That would be 10:59 a.m. on the 11th of September canceled flight 200 Miami to Washington on the 11th and assigned Eastern's flight 176 Miami to Washington on the 11th of September.

So if we got through all that, the change to get to what the actual travel was, occurred on the same date, the 11th of September.

Judge TJOFLAT. At 3:48 p.m.?

The WITNESS. Are you referring to when the reservation was actually changed?

Judge TJOFLAT. No. The flight was scheduled for 3:48?

The WITNESS. Yes, sir.

Judge GODBOLD. But it left at 6:00, didn't it?

Judge POINTER: 5:50.

Judge GODBOLD. And got there at 8:04?

The WITNESS. Right. It was scheduled at 3:48. However, did not leave until 5:50; 2 hours 2 minutes late leaving the gate and 2 hours 4 minutes late in arrival at Miami.

So the change from the 10th of September to the 11th occurred on the 11th of September.

Judge GODBOLD. You said arrival in Miami. Do you mean arrival in Washington?

The WITNESS. I'm sorry. That's correct. Arrival in Washington.

By Mr. Webb:

Q. If you would go back on exhibit 51 to the top four flights that you showed there.

A. Yes, sir.

Q. Those are the flights that as of September 16, 1981, Eastern showed confirmed space on those flights?

A. Yes, sir.

Judge TJOFLAT. That's after it's all done?

The WITNESS. Yes, sir.

Judge TJOFLAT. The stuff that is indented down below that you have been reading on——

The WITNESS. After you go through all that——

Judge TJOFLAT. You arrive at the four lines up above?

The WITNESS. That's correct.

By Mr. Webb:

Q. I take it what you don't know from your research yet is what happened with respect to the third, the second, third and fourth flights?

A. No, sir, I do not.

Q. Now, you don't know whether they were used or not, one way or the other?

A. No, sir, I do not.

Q. Can you look at the Allegheny, on that record, Allegheny flight 730 and read what that flight was scheduled to do?

A. Allegheny flight 730 on the 14th of September from Harrisburg to Washington.

Q. And what time was it getting into Washington?

A. Scheduled into Washington at 12:15.

Q. On the 14th?

A. 14th of September.

Q. And was that Washington National Airport?

A. Yes, sir, that is correct.

Q. Is there then shown on exhibit 52 a connecting flight from Washington to Miami?

A. Exhibit 51?

Q. Fifty-one. Excuse Me.

A. Yes, sir. Shows connecting to Eastern's flight 177 Washington to Miami on the same day at 2 p.m.

Q. Getting into Miami at 4:10?

A. Yes, sir, that's correct.

Q. So on the flight, on the plans that your record shows there was about a two hour layover in Washington National Airport?

A. An hour and 45 minutes, yes, sir.

Q. On September 14th?

A. That's correct.

Q. You had earlier testified that the passenger reservation history contained two parts, one involving flight operations and the other involving the passenger reservations.

A. Yes, sir.

Q. If I draw your attention to exhibits 52 and 51, do those two exhibits reflect the two parts of the record?

A. Yes, sir. Exhibit 52 is specifically for flight 176 on the 11th of September, Miami to Washington.

Exhibit 51 is basically for flight 177 on 14 September, Washington to Miami. However, it does reflect the 176 on the 11th of September.

Judge TJOFLAT. Fifty-two reflects——

By Mr. Webb:

Q. Explain what 52 reflects.

A. Fifty-two is the flight information specifically for flight 176, Miami to Washington on September 11, 1981. That is a record for flight 176.

Fifty-one, the record is really for flight 177, Washington-Miami, September 14. However, it also reflects Eastern's flight 176. This is the latest record that is available.

If I were to have brought this same record for flight 176 in the name of A. Hastings, it's possible that it would not have matched this as far as some of the changes being made that are reflected in this one. This is—this shows all of the flights held as the most current record.

Judge TJOFLAT. Fifty-two is more current than 51?

The WITNESS. No. Fifty-one is more current.

What I don't have here is the actual reservation record on flight 176 in the name of A. Hastings. I have that reflected in exhibit 51.

I know it's confusing.

Every time you have a reservation on an Eastern flight, I will have one of these reservation records in that name for each flight.

Rather than pull all these same records that will show the same information, basically we pull the last Eastern flight that he holds confirmed reservations for.

In this case it was for Eastern's flight 177 on the 14th of September from Washington to Miami.

Again, it reflects the flight on September 11, 176, in the same record.

Have I explained that to——

Judge GODBOLD. Any further questions of this witness?

Mr. WEBB. There are more questions about additional flight plans.

Judge GODBOLD. All right, sir. You may proceed.

Let's stop at this point, Mr. Webb.

We will be in recess for about 10 minutes.

[Thereupon, the proceedings were recessed at 4 p.m., and then reconvened as follows.]

Judge GODBOLD. Be seated, please.

You may proceed, Mr. Webb.

By Mr. Webb:

Q. Mr. Lowe, under the subpoena you were asked to bring with you today as well ticket number 007448166553 reflecting a flight on July 21, 1981?

Judge JOHNSON. What exhibit?

Mr. **Webb**. It's not an exhibit at this point. It's a grand jury matter.

Judge **Godbold**. What is the date of the ticket?

Mr. **Webb**. July 21, 1981.

Judge **Godbold**. All right.

By Mr. Webb:

Q. The subpoena asked you to bring three coupons in connection with that ticket. Do you have those three coupons here with you today?

A. Yes, sir, I do.

Q. I show you a document bearing stamp number at the bottom 010040. This has four coupons on it, but if I can direct your attention to the first one and last two, all of which show a stamp on them on July 21 and appear to relate and all bear the ticket number that I have just read into the record.

Can you tell me if the three copies that I have put in front of you are identical to the three coupons that you brought here today?

A. Yes, sir, they are.

Mr. **Webb**. What I would propose to do now is substitute the three copies that Mr. Lowe has brought with him today for the grand jury record and mark them IC-36-A, B and C.

Judge **Godbold**. You may do so. They are admitted.

[Thereupon, exhibits number IC-36-A, B and C were tendered and received by the committee.]

By Mr. Webb:

Q. In whose name, Mr. Lowe, is the ticket marked IC-36-A?

A. In the name of William Borders.

Q. And what does exhibit 36-A reflect?

A. Flight coupons one, two and three.

Q. Well, 36-A is flight coupon one?

A. Yes, sir.

Q. If you would tell us what that coupon reflects.

A. Reflects a Washington to Miami Eastern Flight 965 on July 21, 1981.

Q. And can you determine from——

Judge **Tjoflat**. July 21?

The **Witness**. Yes, sir.

By Mr. Webb:

Q. What are the times that that flight left and arrived?

A. Scheduled to depart Washington at 1:50 p.m.

Q. And can you determine whether the ticket was actually used?

A. Yes, sir. Our records show it was used.

Q. What date?

A. On July 21, and that was the date of the issue of the ticket also.

Q. Can you determine from the ticket where it was purchased?

Judge **Tjoflat**. It was used on that flight, was it not?

The **Witness**. Yes, sir, it was.

At the airport ticket office in Washington.

By Mr. Webb:

Q. National?

A. Yes, sir.

Q. Now, if you would look at exhibit 36-B which is coupon number two. Is that correct?

A. Yes. sir. That's correct, flight coupon number two.

Q. Tell us, please, what coupon number two reflects.

A. Reflects Eastern flight 470 from Miami to Atlanta on July 21, 1981. It reflects being used.

Q. At what time did the flight depart Miami?

A. Scheduled to depart Miami at 9:30 p.m.

Q. Does the ticket indicate that it was used on July 21?

A. Yes, sir. Our records indicate that.

Q. For the flight as scheduled?

A. Yes, sir.

Q. And in whose name is exhibit 36-B?

A. William Borders.

Q. Looking now at exhibit 36-C, whose name is that ticket?

A. It's also William Borders. Flight coupon three.

Q. What does that reflect?

A. Reflects Eastern's flight 434 from Atlanta to Baltimore on the morning of July 22, 1981, at 12:10 a.m., scheduled to depart Atlanta.

Q. Can you determine from the exhibit whether the ticket was actually used for flight 434?

A. Yes, sir, it was used.

Q. And on what date was it used?

A. July 22.

Q. 1981?

A. Yes, sir.

Q. You were also asked, Mr. Lowe, to bring with you today a ticket on flight number 197 on August 21, 1981, in the name of Mr. Borders——

Judge TJOFLAT. August what?

Mr. WEBB. August 21, 1981.

Ticket number 0074479834615.

By Mr. Webb:

Q. Do you have the document?

A. Yes, sir, I do.

Q. Now, I'm showing you again the page that I have earlier showed you with the number on the bottom 010040.

Drawing your attention to the second coupon on that document, can you compare the ticket you brought here today with the copy and tell me if they are the same?

A. Yes, sir, they are the same.

Mr. WEBB. The copy that I have just shown Mr. LOWE is again from the grand jury, as I propose to mark the copy that he has with him today as IC exhibit 37-A and offer for the committee's consideration.

Judge GODBOLD. It is received.

[Thereupon exhibit number IC-37-A was tendered and received by the committee.]

By Mr. Webb:

Q. Showing you exhibit 37-A, Mr. Lowe, can you tell us what that exhibit reflects?

Q. It reflects an Eastern Airlines ticket issued on August 21, 1981, the Washington Airport. The ticket is in the name of William Borders. It's Eastern flight 197, August 21, 1981 from Washington to Miami, and it reflects it was used.

Q. Departing Washington at what time?

A. 5:30 p.m.

Q. What was the date of issuance of the ticket?

A. August 21, 1981.

Q. And it was purchased at the airline counter at the airport?

A. Yes, sir.

Q. You say the ticket shows it was used. Was the ticket used on August 21?

A. Yes, sir. It reflects that.

Q. Mr. Lowe, I show you documents that have been marked as IC exhibits 35 and 36. Ask if you can identify those documents.

A. Exhibit 35 is a travel agency issued ticket validated for Air Florida. It's in the name of W. Borders.

Q. And what is exhibit 36?

A. Thirty-six is a passenger boarding authority.

Judge GODBOLD. What is the date of this ticket?

The WITNESS. September 11, 1981.

By Mr. Webb:

Q. Tell us what IC-36 is.

A. That's an Eastern Airline issued passenger boarding authority.

Q. For what date?

A. September 11, 1981.

Q. Can you determine from looking at exhibits 36 and 35 whether they have any relationship to one another?

A. Yes, sir. Thirty-five is flight coupon one that we are looking at here, was for an Air Florida flight on September 11th from Washington to Miami.

However, that coupon was not used for that flight. The coupon one was used for Eastern's flight 459 on September 11th from Washington to Atlanta.

As there was no Atlanta-Miami coupon with this ticket, he was issued this passenger boarding authority in order to board Eastern's flight 655 to continue on from Atlanta to Miami. It reflects the original ticket number on the bottom of it which coincides with the ticket number of the travel agency ticket.

Q. The exhibit 36 shows the Air Florida ticket number on exhibit 35?

A. Yes, sir, that's correct.

Judge Godbold. Whose name is this in?

By Mr. Webb:

Q. This is in whose name?

A. W. Borders.

Q. So then looking at exhibits 35 and 36, 35 shows original flight plans to travel on a direct Air Florida flight from Washington to Miami on September 11th, leaving National Airport at 7:30 p.m. is that right?

A. Yes, sir, that's correct.

Q. And exhibit 35 was turned in to Eastern Air Lines at National Airport?

A. That's correct.

Q. On September 11, 1981?

A. It was September 11, 1981 for Eastern's flight 459.

I need to determine from the other records that I have here that—well, if I can look at the timetable again to see that it came out of National and not Baltimore.

Q. Fine.

I think you may need what we already marked as IC-51-C, the timetable effective September 9.

A. Yes, sir.

Yes, sir. It reflects National Airport, scheduled to depart at 9:20 p.m.

Q. Now, in that you are referring to Eastern flight 459——

A. Washington National Airport to Atlanta on September 11, 1981.

Q. And looking at exhibit 36, that shows two flights, one from National to Atlanta which is the 459 flight?

A. It shows that he is off of flight 459, desired flight 655 from Atlanta to Miami.

Q. Is 459 from Washington to Atlanta?

A. Yes, sir.

Q. And the other flight you referred to, 655, is that from Atlanta to Miami?

A. Yes, sir.

Q. So——

Judge Tjoflat. Eastern 655?

The Witness. Yes, sir. That's correct.

Judge Tjoflat. Leaving Atlanta?

The Witness. I'm going to look that time up.

Apparently it was—the stamp says July 12th, so it was after midnight.

By Mr. Webb:

Q. Where are you reading July 12th?

A. I read that to be a 12. If it's——

Q. This is issued in September.

A. September the 11th.

What I'm saying is he left Atlanta after midnight the morning of September 12th, I believe.

Q. The reason I was—I thought I heard you say July 12th.

A. I'm sorry if I did. I meant September.

Judge Tjoflat. What time in the morning?

Judge Johnson. 12:05 a.m.

The Witness. 12:05 a.m.

By Mr. Webb:

Q. So the plans were changed on exhibit 35 from a direct flight to a flight with a stop in Atlanta on Eastern Air Lines shown by exhibit 36?

A. To change planes, to change flights in Atlanta, that's correct.

Q. Do you know what time from your schedule that we have here as exhibit 51-C Eastern flight 6:55 arrived in Miami?

A. Scheduled to arrive at 1:30 a.m.

Q. Is exhibit 36 a record kept by Eastern in the regular course of its business?

A. Yes, sir, it is.

Q. And is it a record that is prepared as part of Eastern's regular business?

A. Yes, sir.

Mr. Webb. I then offer exhibit 36 for the committee's consideration.

Judge Godbold. Admitted.

[Thereupon, exhibit number 36 was tendered and received by the committee.]

By Mr. Webb:

Q. Exhibit 35—you are generally familiar with the ticketing practices and procedures of air lines?

A. Yes, sir.

Q. Is exhibit 35 a record kept in the air line industry in the regular course of business?

A. In the air line industry, yes, sir.

Q. The original would ultimately be kept by whom?

A. By Air Florida. Any other air line coupon used on Eastern would be returned to the issuing air line as part of a billing process. That is how Eastern receives its money, payment for that coupon.

Q. Would it first go through Eastern Air Lines?

A. Yes, sir. Go through our accounting office and put on microfilm just like a regular Eastern coupon would.

Q. Would Eastern retain a copy?

A. Yes, sir. I would have a copy on microfilm.

Q. I show you what's been marked as IC exhibit 38 and ask you if that's a copy of the Air Florida ticket from the records of Eastern Air Lines.

A. Yes, sir, it is.

Mr. **Webb**. At this point I would offer for the committee's consideration IC-38 and IC-35.

Judge **Godbold**. Received.

[Thereupon, exhibits number IC-35 and IC-38 were tendered and received by the committee.]

By Mr. Webb:

Q. I show you, Mr. Lowe, what has been marked as—I will give you this package. It's IC exhibits 40, 41, 42, 43 and 44. Ask you to look at those, 40 through 44.

A. All right, sir.

Q. Can you identify exhibits 40 through 44, please?

A. Forty is flight coupon three of the Air Florida ticket that was issued on September 11th, 1981 that had the Washington-Miami flight coupon that we just discussed.

This particular coupon was for a flight from West Palm Beach to Atlanta scheduled on Delta Air Lines on September 13th.

The exhibit 41 is the number four coupon scheduled for Delta flight on September 13, Atlanta to Washington.

Q. And in whose name are exhibits 40 and 41 issued?

A. W. Borders.

Judge **Johnson**. Where do you find September 13 on that ticket?

Mr. **Webb**. September 13 appears on the third line, the flight information right under a scratchout.

Judge **Tjoflat**. Delta 608.

Mr. **Webb**. That is right.

Judge **Johnson**. Got it.

By Mr. Webb:

Q. Is that what you were reading from?

A. Yes, sir. That's what I was reading from. And then Delta 528 on September 13th.

Q. Can you determine from looking at exhibits 40 and 41 whether those coupons were used for the flights reflected on the face of the ticket?

A. No, sir, I cannot.

Q. You can't determine whether they were used?

A. No, sir. In other words, if they were—I did not have anything in the subpoena calling for coupons three and four of that ticket. In other words, you are saying were they used on Eastern. I didn't bring anything with me, I don't believe.

Q. If you would look then at exhibit 42. Can you identify exhibit 42?

A. Oh, I see what's happened now. I didn't go far enough.

Q. Would you describe exhibit 42 for us?

A. Exhibit 42 is an Eastern Air Line ticket issued in Melbourne on September 12th, 1981. This ticket was issued in exchange for coupons three and four of the Air Florida ticket.

Q. How do you deterimine that?

A. Up in the middle of the, top middle of the ticket, it says "issued in exchange for," and then it reflects the Air Florida ticket 5968401332606.

Q. And you are referring to the reference on exhibit 42?

A. On 42, yes, sir.

Judge Tjoflat. Which Air Florida ticket?

The Witness. The Air Florida ticket 5968401332606.

In other words, the number three and number four coupons, the West Palm Beach-Atlanta, the Atlanta-Washington coupons were turned in at Melbourne on September 12th, 1981, and the Eastern ticket was issued in exchange for it.

So instead of having a West Palm Beach-Atlanta-Washington, we are now looking at a ticket that reads Orlando to Washington on September 12th, Eastern's Flight 858.

In the form of payment on the Eastern ticket on exhibit 42 it shows—in form of payment, it says reissue which means it was reissued against the Air Florida coupons.

Judge Tjoflat. Substitution ticket was Eastern 858?

The Witness. That's correct.

Mr. Webb. At this point, I would offer for the committee's consideration exhibits 40, 41 and 42.

Judge Godbold. Received.

[Thereupon, exhibits number 40, 41 and 42 were tendered and received by the committee.]

By Mr. Webb:

Q. Now, if I can draw your attention, Mr. Lowe, to exhibit 43.

A. This is a reservation record.

Q. Identify that for us, please.

A. This is a reservation record in the name of William Borders for Eastern Flight 664 from Orlando to Baltimore on the 12th of September, 1981.

Mr. Webb. I would offer at this point then exhibit 43 for the committee's consideration.

Judge Godbold. It is admitted.

[Thereupon, exhibit number 43 was tendered and received by the committee.]

By Mr. Webb.

Q. If you go back to exhibit 42, that shows a Flight Number 858?

A. Yes, sir. That is correct. Scheduled to depart Orlando at 8:08 p.m., I believe.

Q. And there's some handwriting on the right-hand side of the ticket, some numbers?

A. Right. Shows 664-F, F being the class of service, 664 being the flight. Below that is the seat number, 3-A.

Q. What does that notation on exhibit 42 indicate?

A. That it was used on flight 664 and not 858.

Q. But that the ticket marked as exhibit 42 was used?

A. Yes, sir.

Q. And then the flight reservation history reflected on exhibit 43 is for flight 664?

A. Yes, sir. That's correct.

Q. And what does that show with respect to the schedule for Flight 664?

A. Scheduled to leave Orlando at 6:45 p.m. and to arrive at Baltimore at 8:35 p.m.

Q. Different airport then than Flight 858?

A. Yes, sir.

Q. On the arrival?

A. That's correct.

Q. Leaving from the same airport?

A. That's correct.

Q. Now, if you would look next at exhibit 44. Ask you to identify that record, sir.

A. This is again part of the reservation record, the part that has the flight information for Eastern's Flight 664 on September 12, 1981.

Q. And what does that record indicate for the actual takeoff and arrival times of Flight 664?

A. Out of Orlando. In other words, away from the gate at 7:00 p.m. off the runway at 7:10 p.m. into Baltimore at 8:58 p.m. on the runway I should say at 8:56 p.m. and at the gate at 8:58.

The flight was 23 minutes late arriving; 15 minutes late departing.

Q. Show you what was marked as IC exhibit 37 and ask if you can identify that, sir.

A. That is the number two flight coupon of the Air Florida ticket 5968401332606 in the name of W. Borders. Reflects——

Mr. Webb. At this point I would offer exhibit 37 to the committee for consideration.

Judge Godbold. Received.

[Thereupon, exhibit number 37 was tendered and received by the committee.]

By Mr. Webb:

Q. What does exhibit 37 reflect?

A. Reflects Eastern's Flight 890, first class, seat 2-A, destination Palm Beach.

Q. On what date?

A. On September 12th.

Q. Can you summarize for me, please, what exhibit 35, 36, 37 and 40 through 44 show for the travel plans?

A. OK. We have an air——

Q. What flights were actually taken?

A. OK. Flight coupon one, Eastern's Flight 459 on September 11th, 1981 from Washington to Atlanta. That's exhibit 35.

Exhibit 36 is the Eastern issued passenger boarding authority for Eastern's Flight 655 on the 12th of September, 1981 from Atlanta to Miami.

Flight coupon two, this is exhibit 37 of the Air Florida ticket, reflects Eastern's Flight 890, September 12, 1981, from Miami to West Palm Beach.

Q. Was that ticket actually used?

A. Yes, sir.

Q. Continue, please.

A. Exhibit 40 and 41 are coupons three and four of the Air Florida ticket which were exchanged for exhibit 42, the Eastern ticket, showing reservations from Orlando to Washington on September 12th, 1981.

However, the ticket was actually used on Eastern's Flights 664 from Orlando to Baltimore on that date.

Q. Thank you.

Now, let me show you three more coupons which are marked as IC exhibits 45, 46 and 47 and ask you first of all if you can identify those as Eastern Airlines flight coupons.

A. Yes, sir, they are.

Q. In whose name are they issued?

A. Mr. W. Borders.

Mr. Webb. At this point, I would offer for the committee's consideration exhibits 45, 46 and 47.

Judge Pointer. They will be received, Judge Godbold?

Judge Godbold. I have a question first, now. I have gotten lost for a moment. Forty-five, 46 and 47 cover what flight or flights and when?

By Mr. Webb:

Q. Can you tell us what flights 45, 46 and 47 cover?

A. Forty-five which is flight coupon one reflects usage on Eastern's flight 459 on September 18th, 1981 from Washington to Atlanta.

Judge Godbold. All right.

The Witness. Flight coupon two reflects usage on Eastern flight 655 on September 19th, 1981, Atlanta to Miami.

Flight coupon three indicates usage on Eastern's flight 190, and our records showed that on September 19th, 1981 also.

Judge Johnson. From where to where?

The Witness. From Miami to Washington.

Judge Godbold. All right. That is 45, 46 and 47?

Mr. Webb. That's correct.

Judge Godbold. They are received.

[Thereupon, exhibits number 45, 46 and 47 were tendered and received by the committee.]

By Mr. Webb:

Q. Looking at exhibit 45, can you determine from exhibit 45 what day that coupon was issued?

A. The ticket, itself, was issued on September 18th, 1981.

Q. And can you determine from the coupon where it was issued?

A. At the Washington National Airport.

Q. The Eastern Air Lines ticket counter?

A. Yes, sir.

Q. And that would be true then for the other two coupons marked as exhibits 46 and 47?

A. Yes, sir.

Q. Can you determine whether exhibit 45 was actually used on September 18th?

A. Yes, sir. Our records reflect that.

Q. That it was used?

A. Yes, sir.

Q. Can you determine if exhibit 46 was actually used?

A. Yes, sir. It was used.

Q. On what date?

A. On September 19th, 12:05 A.M.

Q. In the morning?

A. Yes, sir.

Q. Can you determine if exhibit 47 was actually used?

A. Yes, sir. Our records again reflect September 19th Eastern's flight 190 from Miami to Washington.

Judge Tjoflat. When you say, used, do you mean all used on those flights?

The Witness. Yes, sir.

By Mr. Webb:

Q. Now, exhibit 47 is typed up as an open ticket.

A. Yes, sir.

Q. How do you determine that it was used on flight 190?

Q. That would come from our microfiche by the ticket number.

Let me see if I have my—yes, I do.

Again, I have my investigation request, and also when you print out a request for a ticket, if you have a flight number, they will just go in and look for the name if you don't have a ticket number.

In this case, my investigation request shows that I had the ticket number, and it was listed for that flight and that date.

Judge Godbold. Who fills in the data on that investigation request form?

The Witness. We have clerks that work with the microfiche. We tell them the month to check, and then they will list the flight information from the microfiche on the form.

Judge Godbold. This is not a search that you, yourself, make?

The Witness. No, sir. I make some of these searches, but not all of them.

By Mr. Webb:

Q. Was this search made under your direction and supervision?

A. Yes, sir. The request is put out with my name on the top left-hand corner.

Judge Tjoflat. What is the handwriting there on 47? Shows 190F. First class?

The Witness. Yes, sir.

Judge Tjoflat. What is that under there?

The Witness. It looks like 1-D would be the seat.

Judge Tjoflat. What does 04 mean?

The Witness. I don't know what that means.

Judge Tjoflat. That was written by the ticket agent on there?

The Witness. Yes, sir.

Judge Tjoflat. Gate agent.

The Witness. The gate agent.

Judge Godbold. I suggest you consider establishing that this search request is done in the regular course of business and so on.

By Mr. Webb:

Q. When you are served with a subpoena, Mr. Lowe, is it your responsibility to undertake to have Eastern Air Lines search for the records in response to that subpoena?

A. Yes, sir.

Q. And is that search conducted under your direction and supervision by the clerical employees?

A. Yes, sir. That's correct.

Q. Is that a search that's performed as a regular part of Eastern Air Lines' activities?

A. Yes, sir.

Q. And is that a search that is performed regularly in connection with Eastern's business?

A. Yes, sir, it is.

Mr. Webb. Your honor, at this point I would like to mark as exhibit 47-C the investigation report that Mr. Lowe has been referring to in his recent testimony and offer that for the committee's consideration.

Judge Godbold. It is received.

[Thereupon, exhibit number 47-C was tendered and received by the committee.]

Mr. WEBB. There's one exhibit I would like to take out of order since it relates to the prior—if I could ask him to identify it at this point. It's exhibit 39.

By Mr. Webb:

Q. Could you identify for me exhibit 39, Mr. Lowe?

A. It's a reservation record in the name of Mr. W. Borders reflecting reservations for Air Florida flight 1310, if I'm reading it correctly, from Washington to Miami on September 11th, 1981 and reflecting Eastern's flight 80 from Miami to Palm Beach on September 12, 1981.

Q. And does that show actual usage on any of the flights?

A. No, sir. The reservation record does not show usage.

This I believe then is part of the——

Q. Part of the documents that were marked as exhibits 36 through 43?

A. Yes, sir. It's actually part of exhibit 40 and 41.

Q. Is this——

A. There's the Air Florida flight there.

Q. And this reflects his passenger history for the flight from Miami to West Palm?

A. Yes, sir, that does.

Q. On Eastern Air Lines 890?

A. 890.

Mr. WEBB. I would offer exhibit 39 for the committee's consideration as well.

Judge GODBOLD. It is received.

[Thereupon, exhibit number 39 was tendered and received by the committee.]

Judge TJOFLAT. That IC-39 to do with the Air Florida reservation on the 18th?

Mr. DOAR. The 11th.

Judge TJOFLAT. The 11th.

The WITNESS. Thirty-nine reflects the 11th of September, the Air Florida flight from Washington to Miami and the Eastern flight from Miami to Palm Beach on the 12th of September.

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By Mr. Webb:

Q. I show you what's been marked as exhibit IC-53 and ask if you can identify that as an Eastern Airlines coupon and, if so, tell us what flight it relates to and whose name the coupon was issued.

A. Yes, sir. It's an Eastern Airlines issued ticket in the name of Mr. A. Hastings. This particular flight coupon is coupon three which reflects Eastern's flight 130 on October 9th, 1981 from Atlanta to Washington National.

Judge GODBOLD. What is the date on that?

The WITNESS. October 9, 1981.

Judge GODBOLD. All right.

By Mr. Webb:

Q. And because it's coupon three, that's how you get the reference that it relates to the flight from Atlanta to Washington?

A. Yes, sir.

Q. Can you determine from exhibit 53 whether the ticket was actually used on October 9th?

A. Yes, sir, it was.

Q. Is there a notation on the ticket?

A. It has a used stamp with that flight and date on it.

Q. What time did flight 130 depart Atlanta?

A. I'm going to need to look that up in the——

Q. Let me show you——

A. It looks like 9:12 a.m.

Q. The ticket is a little blurred?

A. It is to me.

Q. Let me show you next then what's been marked as exhibit IC-54 and ask if you can identify that record.

A. Yes, sir. That's a reservation record in the name of—well, it was for Eastern's flight 1620 on the 9th of October, but it also reflects the Eastern flight 130 Atlanta-Washington on the 9th of October, and it was scheduled to depart Atlanta at 9:12 a.m.

Q. There's a reference then on IC-54 for Judge Hastings?

A. Alcee Hastings, yes, sir.

Q. And you say that shows Eastern flight 130 on the reservation history?

A. Yes, sir. That's part of the record.

Q. And what time did that flight arrive according to the reservation history in Washington?

A. Scheduled to arrive at 10:40 a.m.

The WITNESS. It was scheduled at 9:12 a.m.

By Mr. Webb:

Q. On October 9th?

A. On October 9th, 1981.

Q. And arriving at National at 10:40 a.m.?

A. Scheduled to, yes, sir.

Mr. WEBB. At this point I would offer for the committee's consideration IC exhibit 54.

Judge GODBOLD. It will be received.

[Thereupon, exhibit number IC-54 was tendered and received by the committee.]

By Mr. Webb:

Q. I show you next, Mr. Lowe, what document has been marked as IC exhibit 55 and ask if you can identify that document, please?

A. Yes, sir. This is a copy from our passenger flight information report generated for all of Eastern flights for each flight date, and the record gives you the flight number, the class of service, the type of equipment, the boarding station, destination station, number of revenue passengers, space available passengers.

It's a statistical report. OK?

Q. Does the exhibit that I have shown you, IC-55, relate to any particular date?

A. Yes, sir. This one is for October 9th, 1981.

Q. And does it also show the information for flight 197?

A. Yes, sir, it does.

Q. Is exhibit 55 a document kept by Eastern in the course of its regular business activity?

A. Yes, sir, it is.

Q. And is it the regular practice of Eastern Airlines to keep the type of information reflected on exhibit 55?

A. Yes, sir.

Mr. WEBB. At this point, I would offer exhibit 55 for the committee's consideration.

Judge GODBOLD. It is received.

[Thereupon, exhibit number 55 was tendered and received by the committee.]

By Mr. Webb:

Q. Now, looking at exhibit 55, Mr. Lowe, focusing on flight 197 which appears about a quarter of the way down from the top of the document, can you determine from exhibit 55 when flight 197 was scheduled to depart?

A. No, sir, I cannot tell the scheduled departure time on this record.

Q. From what airport?

A. From Washington National.

Q. On October 9th?

A. Yes, sir, that's correct.

Q. Do you have with you here today an Eastern timetable that would reflect the departure time of flight 197 on October 9, 1981?

A. Yes, sir. I have one.

Judge JOHNSON. You are talking about October 7?

Mr. WEBB. October 9.

By Mr. Webb:

Q. Can you identify that document, please, that you have?

A. Yes, sir. Eastern issued timetable that was effective October 1, 1981.

Mr. WEBB. I would ask that we mark that as IC exhibit 55-A, the timetable effective October 1, 1981 for Eastern Airlines and offer that for the committee's consideration.

Judge GODBOLD. It is received.

[Thereupon, exhibit number IC-55-A was tendered and received by the committee.]

Judge GODBOLD. Has he told us what time he says it would leave? I mean it would arrive.

Mr. WEBB. This schedule will reflect what time flight 197 was scheduled to depart Washington.

Judge GODBOLD. When?

Mr. WEBB. The schedule is effective October 1, 1981.

Judge GODBOLD. He hasn't told us what time the flight was due to leave.

Mr. WEBB. I'm going to ask him to look at that now.

Judge GODBOLD. All right.

The WITNESS. Scheduled to depart Washington National at 4:35 p.m. and arrive Miami at 6:45 p.m.

By Mr. Webb:

Q. On October 9, 1981?

A. On October 9th, 1981.

Judge TJOFLAT. 6:54?

The WITNESS. Yes, sir.

Mr. WEBB. For that purpose, I would offer IC-55-A.

Judge GODBOLD. It is received.

[Thereupon, exhibit number IC-55-A was tendered and received by the committee.]

By Mr. Webb:

Q. Now, going back to IC-55, Mr. Lowe, can you determine from IC-55 how many passengers flight 197 could take on October 9, 1981?

A. Yes, sir. The capacity of the airplane would be 12 first class, 137 coach or a total of 149.

Q. Can you determine from IC-55 how many first class passengers traveled on Flight 197 on October 9th?

A. Yes, sir. Twelve.

Q. The capacity for the first class?

A. The capacity for the first class, yes, sir.

Q. Can you determine from IC-55 how many coach passengers traveled on 197 on October 9, 1981?

A. Yes, sir. We had 121 revenue, one positive space and 13 space available.

Q. What does one positive space mean?

A. Someone could be traveling on company business and have a reservation, C-1-R, what we call a C-1-R pass ride. It's some type of pass ride or discount airline employee.

Judge TJOFLAT. Thirteen coach available?

The WITNESS. No. A hundred and thirty-seven seats are available in the coach. The 13 is the number of pass riders that were on that flight.

By Mr. Webb:

Q. Was one——

A. One is a positive space. Technically it could be a pass.

All I'm saying is the positive space is someone that held confirmed reservations. The other 13, you stand by for the flight, and if there's an open seat you get on.

Judge GODBOLD. See if I understand it. As I understand it, the airplance was full but some of those were pass riders who could be bumped.

The WITNESS. No, sir. The airplane was not full. We had a total of 135—I'm sorry. A hundred and——

By Mr. Webb:

Q. You had 109 paying passengers. Is that right?

A. That's correct.

Q. And you had one reservation that was confirmed for 110?

A. A hundred and ten.

Q. And you had 12 first class passengers for 122. Right?

A. We had 12. The first class was full with revenue.

Q. So——

A. That was full.

Q. OK.

A. The coach——

Q. You had 13 nonrevenue passengers?

A. We have 123 coach passengers total including pass riders.

Q. And the capacity——

A. Is 137.

Judge TJOFLAT. How many seats did you have available in the coach?

The WITNESS. Fourteen. It left with 14 open seats.

Judge JOHNSON. And that departed National when?

Mr. DOAR. 4:35.

Mr. WEBB. 4:35.

Judge GODBOLD. All right.

By Mr. Webb:

Q. Even with the nonrevenue passengers, you had 14 open seats?

A. Available seats, yes, sir.

Q. If a revenue passenger wanted a ticket, would that passenger take priority over a nonrevenue passenger?

A. Yes, sir, definitely.

Q. And you had 13 nonrevenue seats?

A. Yes, sir.

Judge POINTER. Before you leave that, that confused me a little bit. You said you had 13 nonrevenue seats.

I understood the witness' earlier testimony to be that there were 13 actual vacant seats as well as one additional person who could have been bumped by a revenue paying passenger. Which——

The WITNESS. No, sir. There were 13 pass riders that could have been bumped by a revenue passenger. There was one possible pass rider that had reservations. He could not be bumped.

So I'm saying that the coach went out with 14 open seats when it departed.

Judge POINTER. Wait a minute. Let me stop you. You say open seats.

The WITNESS. Empty seats.

Does that——

Judge POINTER. OK. Fourteen empty seats?

The WITNESS. Yes, Sir.

Judge GODBOLD. Plus the pass riders. So you really had 27 to 28 seats.

The WITNESS. That's correct. Twenty-seven might be the number we are looking for here.

Judge GODBOLD. All Right.

Judge TJOFLAT. Pass riders could have been bumped.

The WITNESS. Yes, Sir. They could have been bumped. We could have boarded 27 more revenue passengers on that flight had they shown up.

Mr. WEBB. I have nothing further of this witness.

Judge GODBOLD. Any questions from the members of the committee?

Now, Mr. Webb, there are two areas in which the committee has indicated it needs additional evidence. Are you clear on what those are?

Mr. WEBB. I believe it's the June flight 17th and also the September 11 flight, the third—second, third and fourth coupons.

Judge GODBOLD. That's right.

Anything else?

All right. The witness can step down.

Thank you, sir.

The WITNESS. Yes, sir.

Judge GODBOLD. Mr. Doar.

Mr. DOAR. I gather you will adjourn now until morning.

Judge GODBOLD. Yes, sir.

Mr. Doar had mentioned to me earlier the possibility of taking another witness this afternoon who has some need to get away, but I don't see how we can do that.

Mr. DOAR. No. I told her she would have to come back in the morning. We made arrangements for her to stay overnight.

There's a couple of matters I would like to take up just briefly.

Judge GODBOLD. Yes, sir.

Mr. DOAR. We are going to try tonight to make copies of those pages of exhibits 1 through 29 that reflect messages to a number of persons the committee may be interested in, and if it works all right we would deliver those to your chambers the first thing in the morning.

The reason I propose that, I would have done it anyway, is that Ms. Rogers could not get away today and she's coming back in the morning, and if the committee were wanting to ask her anything further about those records when you will have them before you, she will be available.

Judge GODBOLD. All right.

Mr. DOAR. The second thing is, I was handed during the recess an objection by Mr. Anderson stating that it was mailed on the 17th of May in which he signifies that he represents Betty Ann Williams, Judge Hastings' clerk, and he objects to the subpoena and the subpoena duces tecum.

The grounds of the objection is that Ms. Williams lacks authority to produce or permit the inspection of any such documents.

Number two, the communication between a United States judge and the member of the chambers staff are privileged and she has no power to waive that privilege.

Number three, Judge Hastings will not consent to the release of the documents or waive any privileges.

Number four, that this court, this committee has no jurisdiction to authorize the clerk of the United States court to issue subpoenaes.

Number five, that the subpoena was served by an agent of the F.B.I. and that violates the statute and the doctrine of separation of powers.

Number six, that the statutory provisions under which the subpoena are issued are invalid and the rules adopted for their enforcement are invalid.

He also says because that court of appeals appears to lack jurisdiction to afford her relief, Ms. Williams reserves the right and given notice of her intent to seek such protection and relief from the subpoena as she may be entitled to receive in the United States District Court for the Southern District of Florida and Judge Hastings joins in this notice and reservation.

It seem to me, your honor, now Ms. Williams' position is clear, and we are prepared to carry out your instructions with respect to this subpoena.

Judge **Pointer**. Is it clear on this particular point? That is, in your earlier discussions or communications with Mr. Anderson about her having turned over records to the F.B.I. and your agreement at that time not to look at them until they have an opportunity to seek to have the return of those records, I don't understand that as at least literally requesting the return or delivery back to her of the records the F.B.I. has. At least, it doesn't seem to address that.

Mr. **Doar**. I think, your honor, that paragraph one that all documents prepared or maintained in Judge Hastings' request or for use in his chambers are confidential and subject to his exclusive custody and control, as such she lacks authority to produce or permit the inspection of such documents, and so I suppose that—I believe I would construe that to be Mr. Anderson's attempt to raise the issue that he said he was going to raise with respect to the initial production.

Judge **Johnson**. Where are these records, Mr. Doar?

Mr. **Doar**. They are in the custody of the F.B.I. office in Miami.

Judge **Johnson**. How did they get them?

Mr. **Doar**. She turned them over to them.

Judge **Johnson**. How did she get them?

Mr. **Doar**. She had them because—she produced them for the grand jury.

Judge **Johnson**. Right.

Mr. **Doar**. And after the grand jury they were returned to her by the attorney, government attorney, and she was asked to keep custody of them.

Judge **Johnson**. So they have already been released.

Mr. **Doar**. Twice.

Judge **Godbold**. Arguably, she is acting not as an agent for Judge Hastings but as an agent of the grand jury.

Mr. **Doar**. Right.

Judge **Godbold**. Can you get copies made of that within the next few minutes and get them to us?

Mr. **Doar**. Yes, I can.

Judge **Godbold**. All right. Proceedings will be in recess until 9:00 o'clock tomorrow morning, and we will wait in our conference room here to receive copies of that last document.

Mr. **Doar**. All right.

Judge **Godbold**. Is there anything else you want to take up with us, Mr. Doar?

Mr. **Doar**. I don't think so, no.

Judge **Godbold**. We will be in recess until 9:00 o'clock tomorrow morning.

[Thereupon, the proceedings were adjourned at 5:16 o'clock p.m., to reconvene as directed.]

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

I, Linda Fincannon, official court reporter of the United States District Court for the Northern District of Georgia, do hereby certify that the foregoing 250 pages constitute a true and correct transcript of proceedings had before the said committee in the city of Atlanta, Fulton County, Georgia, in the matter therein stated.

In testimony whereof I hereunto set my hand this the 27th day of May, 1985.

LINDA E. FINCANNON,
Official Court Reporter.

TESTIMONY OF WILLIAM JAMES WASHINGTON BEFORE THE INVESTIGATING COMMITTEE OF THE ELEVENTH CIRCUIT COURT OF APPEALS

VOLUME XXVII—WITNESS WASHINGTON

Judge Godbold. Mr. Washington, before you begin your testimony, this is a little different from the usual proceeding. It is not a court proceeding as such. It is an investigation under 28 United States Code, section 372(c), and let me read you a provision of that statute.

"All papers, documents and records of proceedings related to investigations conducted under this subsection," and this is such an investigation, "shall be confidential and shall not be disclosed by any person in any proceeding."

The Witness. (Nods head affirmatively.)

Judge Godbold. Mr. Doar.

Willie James Washington, called as a witness, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Doar:

Q. Mr. Washington, where do you live?

A. Acworth, Georgia or between Acworth and Woodstock.

Q. Could you keep your voice up as loud as you could? Pull the microphone just a little—the one on the other side, just a little back toward you.

That's fine.

Judge Godbold. Between Woodstock and what?

The Witness. Acworth.

Judge Tjoflat. A-C-K-W-O-R-T-H?

The Witness. A-C-W-O-R-T-H.

By Mr. Doar:

Q. What is your occupation?

A. I am a reservation supervisor at Eastern Airlines.

Q. And where are you the reservation supervisor?

A. I'm sorry?

Q. Where? What location?

A. 2791 Akers Hill Road. It's Atlanta, Georgia.

Q. And how long have you been a reservations supervisor?

A. For eight and a half years.

Q. How long have you worked for Eastern Airlines?

A. Fifteen and a half years.

Q. Did you work in reservations before you became a supervisor?

A. Yes, I did.

Q. And are you familiar with the Eastern computer reservation records?

A. Yes, I am.

Q. And the symbols that are used and the method by which entries are made on the Eastern Airlines reservation computer?

A. Yes, sir.

Q. And did you at my request examine several documents that have been marked for exhibits in these proceedings and read from or translate the symbols and letters into a description of just what information was contained on the document?

A. Yes, I did.

Q. And I wonder if I could place before you exhibit 39 and, directing your attention to the passenger whose name is underlined in red, can you tell me what the name of that passenger is?

A. Yes. Mr. W. Borders, B-O-R-D-E-R-S.

Q. Now, let me place before you another exhibit which is exhibit 43 and calling your attention to the passenger whose name is underlined there, whose name is that?

A. That's William Borders, B-O-R-D-E-R-S.

Q. Now, if a passenger called up and gave his name as W. M. Borders and subsequently called again and gave his name as William Borders, would your——

Judge Godbold. Excuse me, Mr. Doar. I understood his testimony to be that IC-39 said W. Borders.

Mr. Doar. Excuse me.

Judge Godbold. And that IC-43 said W. M. Borders.

By Mr. Doar:

Q. Is that correct?

A. IC–43 is William Borders.

Judge Godbold. William Borders.

And 39 is just W. Borders?

The Witness. Mr. W. Borders.

Judge Tjoflat. His middle initial is A, isn't it?

By Mr. Doar:

Q. If a passenger called up and gave his name as W. Borders and then another person called up and gave his name as William Borders, would the reservation histories appear under the same or different names?

A. It would appear under different names unless the customer referred to the other reservation.

Judge Godbold. Mr. Doar, we are a little crossed up again.

Mr. Doar. Okay.

Judge Godbold. Your last question was if a person calls and gives the name W. Borders and another person calls and gives William Borders, will you get two records.

Mr. Doar. Okay. I will strike that and start over. Thank you.

By Mr. Doar:

Q. If a person calls and makes a reservation for an Eastern flight and gives as his name W. Borders and then subsequently, we will say on the following day, a person calls and gives his name as William Borders, will the reservation histories fall under the same or two different names.

A. Two different names.

Q. And is there any way other than getting information from the person who calls to match those reservation histories together?

A. No, it's not.

Q. OK. Now, taking the reservation history that you have there that was under the name of W. Borders, could you read for us what information is contained on that record?

A. This is Mr. W. Borders——

Q. Yes.

A. That you are referring to?

Q. Let me ask you, first of all, did you at my request write out on a sheet of lined paper just what information you found on that?

A. Yes, I did.

Q. On that exhibit?

A. Yes, I did.

Q. And which exhibit are you referring to now?

A. IC–39.

Q. All right. Now, would you go ahead and read it?

A. OK. On the 10th of September——

Q. Of what year?

A. I'm not sure of the year. I didn't have a year on it, this record.

Q. All right. It's on the 10th of September.

A. The 10th of September, 12:35 p.m., Air Florida booked their flight number 131, Washington-Miami, for the 11th of September and also booked Eastern flight 890——

Judge Tjoflat. Washington to Miami for——

The Witness. The 11th of September.

Judge Tjoflat. At what time?

The Witness. The departure time? The record does not indicate that. The Air Florida record shows just 0–0–0–0. Does not indicate as to the time of that departure.

That was booked at 12:35 p.m.

At the same time, they booked Eastern flight 890, and that's coach class, Miami-West Palm Beach, and that's for the 12th of September, and that flight left at 11:10 a.m., arriving at 11:36 a.m.

By Mr. Doar:

Q. Now, let me stop you right there.

How do you know from that record that this was an Air Florida reservation, booking?

Q. Because the message came from Air Florida reservation center which is in Miami.

Q. And what do you mean when you say the message came from Air Florida reservation center?

A. Any time we receive a message from another airline or booking from another airline, it attaches the airline code and the place where the reservation was booked or where the reservation center is.

Q. Would you continue?

A. OK. They also booked Eastern flight 790——

Judge TJOFLAT. Air Florida also booked?

The WITNESS. Yes.

Eastern 790, Coach class, West Palm Beach to Washington for the 13th of September, and that flight was scheduled to leave at 1 p.m., arriving at 2:59 p.m.

By Mr. Doar:

Q. OK. What is the next entry on IC-39?

A. The next entry is about 10 minutes later at 12:45 the same day, 10th of September, Air Florida sent us a message to cancel Eastern flight 790——

Judge TJOFLAT. Air Florida sent you a message, Eastern?

The WITNESS. By computer, sir.

To cancel Eastern 790, coach, West Palm-Washington. That was scheduled for the 13th of September.

By Mr. Doar:

Q. What is the next information on that reservation history?

A. On the 11th of September at 5:46 p.m., Eastern Airlines Charlotte Reservation Center canceled Eastern flight 890, Miami-West Palm, for the 12th and booked—this was 890 coach. And rebooked Eastern 890, first class, Miami-West Palm for the 12th.

Q. Is there any other information about W. Borders on that reservation history?

A. Other than telephone numbers and that kind of thing.

Q. OK. What telephone numbers were left by the passenger or by the person who called?

A. The phone number that was left was on Washington area code 202-785-3722. There was not indication as to—I'm sorry. It indicated that it was a home number.

Q. Did it indicate who was placing the reservation?

A. Again, we received it from Air Florida, so it doesn't tell us who Air Florida talked to. We only get it from who we received it from which is indicating Air Florida.

Q. Was there any other information on that reservation history?

A. No. Only the—some of the changes that were made by the Eastern Reservation Office were received—well, we indicate P, which means the passenger.

Q. I see. You mean you got the call from the passenger with respect to the change——

A. Right.

Q. Of coach to first class from Miami to West Palm Beach?

A. That is correct. That is the one that was handled by Charlotte Reservation Office on the 11th of September.

Q. Now, would you take a look at exhibit 51, and would you read us the information that's contained on that reservation history?

A. OK. This is Mr. — Well, I'm sorry. A. Hastings, just A. Hastings.

Q. Wait a minute. I'm sorry. I didn't mean that. I wanted to go to the——

A. Forty-three?

Q. The one with Arunk on it.

A. Forty-three is William Borders.

Q. That's right.

A. And on that one, this was received by Eastern's Miami Reservation Office at 1:06 p.m. on the 12th of September. He booked Eastern flight 532, first class, West Palm-Atlanta. The flight was scheduled to leave at 4:12 p.m., arrival at Atlanta at 5:47 p.m., and that's for the 12th of September.

Also booked Eastern flight 904, first class, Atlanta-Washington, 6:45 p.m. departure, 8:13 p.m. departure, for the same day, the 12th of September.

Q. Let me stop you right there

How do you know from looking at that particular reservation history that at 1:06 that the passenger booked that fight?

A. That is what the record indicates and this—we indicate this because there were some changes made to this, and this was the first change that was made.

Q. I see. What happened at 3:30?

A. OK. At 3:30 on the same day, 12th of September, Eastern flight 532——

Judge TJOFLAT. At 3:30 p.m.?

The WITNESS. At 3:30 p.m., the 12th of September.

Eastern flight 532, first class, from West Palm to Atlanta, was canceled, and Eastern flight 266, first class, Melbourne-Atlanta was rebooked, and that flight departed at 4:35 p.m., arriving Atlanta at 5:55 p.m.

Judge TJOFLAT. Four what?

The WITNESS. At 4:35 p.m., arriving Atlanta at 5:55 p.m., which would have connected with the same Eastern flight 904 which left at 6:45.

By Mr. Doar:

Q. And then what happened next with respect to that reservation history?

A. At 4:39 p.m. on the 12th of September, at our Melbourne Airport, Eastern flight 266, first class, Melbourne-Atlanta, was canceled, and also Eastern flight 904, first class, Atlanta-Washington, was canceled, and they booked Eastern flight 858, coach class, Orlando-Washington which left Orlando or scheduled to leave Orlando——

Judge TJOFLAT. Eastern what?

The WITNESS. 858, coach class.

Orlando-Washington, which was scheduled to leave Orlando at 8:08 p.m., arriving at 10:00 p.m. for the same day of the 12th of September.

Judge GODBOLD. Did that arrive at Washington or——

The WITNESS. Washington National.

Judge TJOFLAT. Not Baltimore?

The WITNESS. Not Baltimore. Washington National.

OK. A short time later, 4:40 p.m., same day, at Melbourne field again, Eastern 858, coach, that left Orlando to Washington National was canceled, and they booked Eastern flight 858, first class, Orlando-Washington, so it was just a change from coach to first class.

By Mr. Doar:

Q. And then what happened next?

A. All right. At 6:02 p.m., same day, at Orlando field, Eastern 858, first class, Orlando to Washington, was canceled and rebooked on Eastern flight 664, first class, Orlando to Baltimore-Washington International.

Q. Is there any further——

Judge TJOFLAT. Leaving Orlando?

The WITNESS. I will have to look at those times.

Judge TJOFLAT. At 6:45?

The WITNESS. At 6:45, arriving at 8:35.

By Mr. Doar:

Q. Is there any further information on that reservation history?

A. Again, there is no telephone number indicated on there. It indicated a West Palm Beach where the call was coming from, but there is no telephone number. Just says area code 305 and a none which is what we indicate when the customer does not give us a telephone number.

Q. Well, would the customer be the person that is telling you that he's calling from West Palm?

A. No. We have a call identifier that comes on every time we receive a call, and we usually use that identifier if the call comes in from West Palm.

It doesn't have to be in the city of West Palm, but we have a lot of toll free numbers they can call, so it comes on as West Palm, and we use that telephone number.

Q. I wonder if you would explain that a little bit more. I'm not sure I understand it.

A. OK. If the call comes in and it says West Palm, it advises the agent taking the call, it will say West Palm.

Judge TJOFLAT. What advises the agent?

The WITNESS. We have a call identifier on our telephone system.

Judge O'KELLEY. Is this on your toll free number?

The WITNESS. No. On our toll free number, it would say something like WATTS which indicates to us that's a WATTS call.

Judge TJOFLAT. Is the identifier a machine? A computer?

The WITNESS. It's somehow attached to the telephone system so that when a call comes in we know where the call is coming from.

Judge GODBOLD. Does a little light come or does a voice say West Palm?

The WITNESS. The agent hears a voice identifier that says West Palm.

Judge TJOFLAT. The booking agent?

The WITNESS. Yes.

Judge TJOFLAT. And types P-B-I or West Palm into the machine?

The **Witness**. Right. Normally though it would not do that until they make a record, of course.

By Mr. Doar.

Q. Well, West Palm, the identifier could encompass an area larger than the city of West Palm Beach. Is that what you are saying?

A. Normally, it's a local West Palm call or—you know, the agent could also ask the customer where he's calling from. It could be two different ways.

Q. Now, you testified that at 1:06 the passenger made a reservation leaving at some time after 4 o'clock from West Palm to Atlanta?

A. Correct.

Q. Yet on the line that gives the information which the booking agent received at 1:06, there's no reference to that particular flight; is that correct?

A. That is correct.

Q. Well, how do you then know that the reservation was made at that time for a flight?

A. OK, if—on this history, if there's no change to the record, the flight to the left would be the original booking flight.

Q. I see.

A. If there's been some changes, the flight to the left is the final flight that is shown, that the passenger made, final change that the passenger made. Okay?

To the right would always indicate what changes have taken place, and the first flight that was canceled meaning that that flight had to be booked, the first flight was canceled was the West Palm Beach-Atlanta flight.

Q. I see. Since that flight was canceled, that will never appear on the left-hand side of the information?

A. Not unless that flight was some time rebooked later, that same flight, but if it was not rebooked, it would not appear.

Q. I wonder if you could explain to the committee just what you mean by the information on the left side of the sheet and the information on the right.

A. OK. The information on the left side of the sheet is the history, the things that has taken place since this original flight was booked, original P&R, what we call passenger's name, record was booked.

The information to the left side shows the final, what was the final record. This is what the passenger should have traveled on if he flew.

Q. OK. Now, let me place before you IC-37 and 40 and 41 and 42 which appear to be tickets for W. Borders, and you will notice that for the third and fourth leg of that ticket, the flight is listed as Delta 608 leaving West Palm at 7 o'clock on the 13th, and then going——

Judge **Tjoflat**. Is that 41?

Mr. **Doar**. It's both 35—all of the tickets reflect the same thing.

Judge **Tjoflat**. What are those numbers again?

Mr. **Doar**. IC-35, IC-37, I believe—IC-37——

Judge **Tjoflat**. Thirty-five, 37——

Mr. **Doar**. Yes. Forty and 41.

By Mr. Doar.

Q. You notice that the third leg of that ticket shows West Palm on Delta flight 608 on the 13th leaving at 7 o'clock.

A. Uh-huh.

Q. And the fourth leg is Atlanta, first class, Delta 528 leaving at 9:49?

A. Uh-huh.

Q. Now, could you tell us where those reservations would appear?

A. They would have had to be made either directly with Delta or with some other airlines not involved in the original initerary.

In other words, our ticket agent could have called Delta direct over the telephone and made the reservation directly with Delta and their computer system and wrote the tickets out based on the information they received from Delta.

Q. And why wouldn't that information go into your computer?

A. Because there is no way to match up a Delta reservation unless it's booked directly into our computer system.

Q. I see.

A. Each record has a record locator, and unless they are cross-referenced somehow, there's no way to match them up.

Q. Now, turning to IC-51——

Judge **Tjoflat**. Does that go to a different time frame, Mr. Doar?

Mr. **Doar**. Yes. Maybe we should stop.

Judge **Tjoflat**. May I ask a question or two about these documents?

Mr. DOAR. Yes.

Judge TJOFLAT. I need to go back, Mr. Washington, to IC-39.

Mr. Doar, do you happen to have another copy?

Mr. DOAR. I don't have another copy.

Judge TJOFLAT. That's all right.

Judge GODBOLD. Judge, do you want to move down there and stand by Mr. Washington?

Judge TJOFLAT. All right.

Who initiated IC-39, the first entry?

The WITNESS. OK. This is the one that we received from Air Florida.

Judge TJOFLAT. Can you say who initiated it with Air Florida?

The WITNESS. We can't tell you that. Only Air Florida can tell you that.

Judge TJOFLAT. Well, is it true that a party with telephone number 202-785-3722 initiated it?

The WITNESS. Possibly, yes.

Judge TJOFLAT. Well, for the record, Mr. Doar, that is Travel Network International, Inc.'s telephone number in Washington, DC.

Mr. DOAR. All right.

Judge TJOFLAT. Now, as I understand it, on the 10th of September at 12:35, Air Florida booked 131 from Washington to Miami——

The WITNESS. Correct.

Judge TJOFLAT [continuing]. For the next day.

The WITNESS. For the 11th of September.

Judge TJOFLAT. You don't have the time?

The WITNESS. Air Florida's time of their flight, right.

Judge TJOFLAT. And then Air Florida told you that they booked for Mr. Borders Eastern 890 from Miami to Palm Beach for the 12th, leaving at 11:10 and arriving 11:36?

The WITNESS. Right.

Judge GODBOLD. The 11th or the 12th?

Judge TJOFLAT. The 12th.

Judge GODBOLD. All right.

Judge TJOFLAT. And you are telling us that the message you received from Air Florida came from Miami?

The WITNESS. That's where their reservation center is located.

Judge TJOFLAT. All right.

The WITNESS. It could have originated any place, but the actual message comes to our reservation center from Miami.

Judge TJOFLAT. Is it also true that at the same time, that is to say at 12:35 p.m. on the 10th of September, Air Florida told you that they had given Mr. Borders space on Eastern 790Y from Palm Beach to D-C-A? That is Washington?

The WITNESS. Right.

Judge TJOFLAT. On the 13th?

The WITNESS. Right.

Judge TJOFLAT. Leaving at 1:00 o'clock in the afternoon and arriving at 2:59?

The WITNESS. Correct.

Judge TJOFLAT. All right. Now, at 12:45 p.m. on the 10th, Air Florida sent you a second message?

The WITNESS. Right.

Judge TJOFLAT. Okay. They canceled in this message, they told you they canceled Eastern 790Y for the 13th of September?

The WITNESS. Right.

Judge TJOFLAT. From Palm Beach to D-C-A?

The WITNESS. Correct.

Judge TJOFLAT. Now, you heard me mention, Mr. Washington, for the record that that telephone number, we know from another source that that 202-785-3722 is Travel Network International, Inc. which happens to be stamped on the ticket.

The WITNESS. Uh-Huh.

Judge TJOFLAT. That was issued on Air Florida for Air Florida 131.

The WITNESS. Okay.

Judge TJOFLAT. On the 11th. then that Eastern 890.

Now, this same passenger evidentally had a reservation on Delta 608 first class for September 13 leaving at 7:00 a.m.

Air Florida told you that they had canceled Eastern 790 that was going from Palm Beach to Washington on Sunday, the 13th?

The WITNESS. Correct..

Judge TJOFLAT. Now, is it possible that the passenger or the travel agency canceled the Eastern flight on September 13 from Palm Beach to Washington and substituted and made a reservation on Delta coming to Washington through Atlanta?

The WITNESS. Correct. That's very possible.

Judge TJOFLAT. And you wouldn't have that Delta information?

The WITNESS. No. They would have called Delta direct.

Judge TJOFLAT. I understand that one.

Now, let's go to 43, IC-43.

Let's go back a moment to IC-40 which has that Delta flight we were talking about, Delta 608.

Can you tell me when that ticket—that ticket issued on the 11th didn't it?

The WITNESS. Right.

Judge TJOFLAT. We can't tell from that ticket when that Delta reservation was made, can we?

The WITNESS. No.

Judge TJOFLAT. Now, we go to IC-43. At 1:06, as I understand it, your Miami reservation center got a phone call——

The WITNESS. Correct.

Judge TJOFLAT [continuing]. From someone purporting to be William Borders?

The WITNESS. It says received——

Judge TJOFLAT. Received P, and P stands for passenger?

The WITNESS. Received P, right.

Judge TJOFLAT. And then what else does it tell you? It says P-B-I phone on something, 305. What is that?

The WITNESS. None.

Judge TJOFLAT. Read me what it says.

The WITNESS. P-B-I 305, area code 305, none.

Judge TJOFLAT. Now, what does "none" mean?

The WITNESS. "None" means he did not give us a telephone.

Judge TJOFLAT. He didn't give you a telephone number?

The WITNESS. Right.

Judge TJOFLAT. Explain to me a little bit more how the person who answered the phone in Miami knew it was coming from a 305 telephone number.

The WITNESS. Okay. There is several ways that this could happen. When the passenger calls in to Eastern Reservation Center, if he's calling from a local West Palm Beach number, then the phone identifier would tell the agent West Palm.

Judge TJOFLAT. Is that a flashing light or something?

The WITNESS. No. It's a voice identifying the——

Judge TJOFLAT. An automatic voice?

The WITNESS. Right.

Judge TJOFLAT. Would tell your reservations agent——

The WITNESS. Where the call is coming from, what city.

Judge TJOFLAT. Before the party got on the line?

The WITNESS. Right.

Judge TJOFLAT. And in Miami which is also in area code 305, the voice would have said what, Palm Beach or West Palm beach or what?

The WITNESS. You mean if he was calling from Miami or if the reservation agent is in Miami?

Judge TJOFLAT. The document says P-B-I. No. It says 305. Excuse me.

The WITNESS. P-B-I 305.

Judge TJOFLAT. It says 12 sep and then parenthesis, fone, F-O-N-E. That means telphone?

The WITNESS. Right.

Judge TJOFLAT. And then it says P-B-I 305 none.

The WITNESS. Right.

Judge TJOFLAT. Now, what did the little voice say?

The WITNESS. OK. What it said, if you were calling from West Palm.

Judge TJOFLAT. Is that what P-B-I in the document means?

The WITNESS. Right. P-B-I is the code for West Palm, it would say West Palm.

Judge TJOFLAT. And the little voice said West Palm Beach?

The WITNESS. Right.

Judge TJOFLAT. A local number?

The WITNESS. Right.

Judge TJOFLAT. This voice arrangement automatic thing, is that a computerized situation so there could be no error?

The WITNESS. Yes, it is.

Now, the person could be calling long distance an Eastern number in West Palm. He could be in a different city but calling the Eastern local number in West Palm, and it would still say West Palm. You wouldn't know where he is, but as long as he's dialing that Eastern number in West Palm, then it would say West Palm.

Judge TJOFLAT. Well, there isn't any doubt that the person who picked up the telephone and answered the passenger's call was in Miami?

The WITNESS. Yes. There's no doubt that the person that made the reservation was in Miami.

Judge TJOFLAT. Now, what you are saying is that—let me ask you this. What number would the passenger have called——

The WITNESS. They would call a local——

Judge TJOFLAT. To get Miami?

The WITNESS. They would call a local West Palm number, and the call would go into our Miami reservation office.

Judge TJOFLAT. If they looked in the yellow pages in West Palm and saw Eastern Airlines and their reservation number, the individual called that reservation number from a local number in West Palm——

The WITNESS. Right.

Judge TJOFLAT. Then your little voice would tell the person in Miami Palm Beach?

The WITNESS. Correct.

Judge TJOFLAT. If the individual happened to be in Fort Pierce which is 70 miles or so to the north which is also in area code 305 and that individual in Fort Pierce dialed the Eastern number in West Palm Beach, what does the little voice tell the person in Miami?

The WITNESS. Still would say West Palm.

Judge TJOFLAT. OK. If the person is in Fort Pierce and calls Eastern in Miami, what does the little voice say?

The WITNESS. We would probably have a watts number, and it would say watts, just to let them know he was calling on the watts.

Judge TJOFLAT. You wouldn't know where——

The WITNESS. You have to ask the customer where he's calling from.

Judge TJOFLAT. So the conclusion to be drawn from this is that the passenger either called from a local number in West Palm to the Eastern number in the yellow pages in Palm Beach——

The WITNESS. Correct.

Judge TJOFLAT. Or called from some place else to that same Palm Beach Eastern number?

The WITNESS. Well, that's also possible.

There's also a third possibility.

Judge TJOFLAT. What is that?

The WITNESS. One thing the reservation agent does is when the passenger is leaving from West Palm Beach and he do not have a telephone number, whatever, they put in West Palm Beach.

The reason for that is the phone identifier and the first departing city should match, and if it doesn't match, then they have to put in something that we call arunk which is arrival unknown, how he's getting to it.

Judge TJOFLAT. Now, there's an arunk on here.

The WITNESS. Right. This is saying that——

Judge TJOFLAT. Arunk on the document.

The WITNESS. Right, which means how he's getting into West Palm Beach, we don't know.

Judge TJOFLAT. Now, the passenger gave that information and not the little automatic voice?

The WITNESS. Right. The passenger would have had to have given that.

Judge TJOFLAT. During the conversation with the reservation agent?

The WITNESS. I would suspect so.

Judge TJOFLAT. Well, getting back to the little voice, is it true, forgetting what the colloquy was between the passenger and the reservation agent, just to the little voice, according to the little voice, that passenger was in Palm Beach dialing the Eastern number in Palm Beach from a local Palm Beach number or the passenger was some place else and dialed that local Palm Beach Eastern number?

The WITNESS. Correct.

Judge TJOFLAT. Is that right?

The WITNESS. Right.

Judge TJOFLAT. Now, the little voice wouldn't have anything to do with the arunk. That came from the passenger?

The **Witness**. Right.

Judge **Tjoflat**. So when the arunk appears, the reservation agent has been told by the passenger that the passenger is going to get to Palm Beach from some place else?

The **Witness**. Correct. We don't know where, but——

Judge **Tjoflat**. If the passenger said, "I'm going to be in Palm Beach all this time until the flight leaves," would the arunk have been there?

The **Witness**. It normally would not be necessary, as long as they put in the phone P-B-I.

Judge **Tjoflat**. What about a call back number?

The **Witness**. I don't know. What are you asking?

Judge **Tjoflat**. Well, it says 305 none.

The **Witness**. Right.

Judge **Tjoflat**. The reservation agent would have asked for a call back number?

The **Witness**. We always ask for a telephone number. Well, they should ask for a telephone number. The customer can either say "I'm on my way to the airport" or "I don't have a phone where you can reach me" or a lot of different things.

Judge **Tjoflat**. All right.

The **Witness**. He could also say, "I'm in Miami, and I'm driving to West Palm Beach."

Judge **Tjoflat**. Where was the passenger when Eastern got the call at 3:30 on the 12th?

The **Witness**. Well, again, we don't know where the passenger was. All we know is who handled the reservation.

Judge **Tjoflat**. Who was that? Somebody in Miami?

The **Witness**. Let me take a look at it.

No. This was handled by—let me make sure. This was handled by an Atlanta reservation agent. Now, our telephone system is set up so that any one of our ten reservation offices can handle a call depending on how busy the other offices are.

Judge **Tjoflat**. It is an automatic thing?

The **Witness**. Automatic switching, right.

Judge **Tjoflat**. When you call Eastern, it flips it——

The **Witness**. Correct.

Judge **Tjoflat**. At 4:39 p.m., do you know from the document that the passenger was at the Melbourne Airport?

The **Witness**. From the person that handled the reservation, made the changes, it was at the Melbourne Airport.

Judge **Tjoflat**. At the Eastern ticket counter?

The **Witness**. Right.

Judge **Tjoflat**. And the same at 4:40?

The **Witness**. Correct.

Judge **Tjoflat**. And at 6:02 the passenger, I take it, was at the Orlando Eastern ticket counter at the airport.

The **Witness**. Correct.

Judge **Tjoflat**. One last word about Arunk. Do I take it that—well, this sounds like a silly question. How far away from Palm Beach would the passenger have to be for the reservation agent to put in Arunk?

The **Witness**. Probably some other city other than local West Palm. Maybe Orlando, Melbourne, Miami, anyplace, and they might say——

Judge **Tjoflat**. Forty or 50 miles away?

The **Witness**. Could be.

They might ask him, "how are you going to get to the West Palm Airport," thinking he might be flying in on another carrier.

Judge **Tjoflat**. It wouldn't be in a suburb of Palm Beach?

The **Witness**. Probably not.

Judge **Tjoflat**. Okay.

Judge **Godbold**. Mr. Doar, any further questions?

Mr. **Doar**. We have one more reservation record, your honor.

By Mr. Doar:

Q. Would you take the other reservation now and read that for the committee? That's 51. Do you have 51?

A. Fifty-one? I don't think so. I don't have it.

Q. Here it is. Go ahead.

A. The reservation for an A. Hastings and, of course, normally when we just indicate A that means it's a Mr., but that doesn't mean that's the case.

Judge **Tjoflat**. May I ask one last question?

Mr. Doar. Yes.

Judge Tjoflat. Let's suppose that I am a passenger at 1:06 that day calling, and I called from Fort Pierce, and Fort Pierce doesn't have an Eastern Airlines ticket office. Is it possible that the number for Eastern in the Yellow Pages in Fort Pierce would be the Palm Beach number?

The Witness. I don't think so, because Fort Pierce would be long distance, and we have local numbers there or we have the toll free number.

Judge Tjoflat. All right.

The Witness. We have toll free numbers or local numbers in a lot of cities that we don't have airports.

Judge Tjoflat. Okay. Thank you.

I'm sorry, Mr. Doar.

Mr. Doar. That's all right.

The Witness. Reservation for an A. Hastings, and on this one it was booked by Eastern out of our Miami reservation office at 2:29 p.m. on the 25th of August.

They booked Eastern Flight 190, coach class, Miami-Washington for the 11th of September, leaving at 12:00 noon, arriving Washington at 2:11 p.m.

Also booked U.S. Air Flight 716, Y class, Washington to Harrisburg. That was for the 13th of September. That's at 10:30 a.m., arriving at 11:15 a.m.

They also booked U.S. Air Flight 725, coach class, Harrisburg back to Washington, for the 14th of September, leaving at 1:15 p.m., arriving Washington National Airport at 1:59 p.m.

Booked Eastern Flight 197, coach class, Washington National to Miami, for the 14th, leaving at 5:30 p.m., arriving at 7:43 p.m.

Now, at 3:11 p.m. on the 28th of August——

By Mr. Doar:

Q. Can I stop you with respect to the reservation on the 25th? What does your record show was the person who made that reservation?

A. It was received from Betty, and that's all we have, and I think Betty later indicates that it was his secretary.

Q. Is there any telephone number?

A. Yes. A Miami number, area code 305-350-4289 which is the business number for U.S. District Court.

Q. OK.

A. And there is also a Fort Lauderdale number.

Q. What is that number?

A. Area code 305-731-8176, and that's indicated as a residential number.

Q. OK. That was on the 25th. Now, you are testifying or ready to testify about the 28th?

A. The 28th of August, also handled by Eastern reservation office in Miami, Eastern Flight 190, coach class, Miami-Washington, was canceled and was rebooked on Eastern Flight 198, coach class, Miami-Washington for the 10th of September, 6:50 p.m departure, arriving at 9:00 p.m.

Q. Who made that reservation?

A. That just shows received P which means passenger.

Q. What does the record next show?

A. OK. At 4:34 p.m. on the 31st of August, handled by a Tampa reservation office, Eastern's Tampa reservation office, Eastern Flight 198, coach class, for the 10th of September, Miami-Washington, was canceled.

Eastern Flight 197, coach, Washington-Miami, for the 14th of September was canceled.

They booked Eastern Flight 176, coach, Miami-Washington for the 10th of September at 3:48 p.m., arriving at 6:00 p.m.

Rebooked Eastern Flight 197, Washington-Miami, for the 14th of September, and because of the new times, departure now departed at 4:35 p.m., arriving 6:54 p.m. Before it was leaving at 5:30, so they had to make a change to show that.

Q. Who made that reservation?

A. That showed also received passenger.

I'm sorry. Hold on. I'm sorry. It shows received secy, which we put in for secretary, S-E-C-Y. So we obviously talked to the secretary.

Q. All right.

A. On the 1st of September at 1:52 p.m., handled by Miami reservation office, Allegheny Flight 725, coach class, Harrisburg-Washington, on the 14th of September was canceled, and also Eastern Flight 197, coach class, Washington-Miami, for the 14th was also canceled.

Rebooked or booked on Allegheny—I'm sorry. U.S. Air's Flight 169, coach class, Harrisburg-Pittsburgh, for the 14th, leaving at 4:16 p.m., arriving Pittsburgh at 5:00 o'clock, connecting with Eastern Flight 739, coach class, Pittsburgh-Fort Lauderdale, for the 14th, leaving at 6:51 p.m., arriving at 9:09 p.m.

Judge TJOFLAT. Connecting with what?

The WITNESS. Eastern Flight 739, coach class, Pittsburgh-Fort Lauderdale.

By Mr. Doar:

Q. Who made that reservation?

A. That was per Betty also. I assume is the secretary.

Judge TJOFLAT. What were the times for that?

The WITNESS. At 6:51 p.m. departure, 9:09 p.m arriving.

At 3:02 p.m. on the 3rd of September, again handled by Eastern Miami reservation office, they arranged for the tickets to be mailed, and the tickets were to be mailed to Judge Alcee, A-L-C-E-E, Hastings, U.S. District Court, 300 Northeast First Avenue, Room 327, Miami, Florida, 33101.

They were to be charged to a card, 4304100249079 with an expiration date of 9-92 and in the name of Alcee, A-L-C-E-E, L. Hastings.

Judge TJOFLAT. What credit card?

The WITNESS. It seems like Bankamericard, but I'm not sure about the number.

By Mr. Doar:

Q. What do you have next?

A. OK, 11:40 p.m. on the 4th of September, from U.S. Air Pittsburgh office, they advised us that their Flight 169 from Harrisburg-Pittsburgh was going to be canceled. It was not operating. It is the one that was scheduled for the 14th of September.

Judge TJOFLAT. It said that U.S. Air——

The WITNESS. One sixty-nine on the 14th of September from Harrisburg to Pittsburgh was going to be a no op, wasn't going to operate.

Judge TJOFLAT. Not operating?

The WITNESS. Correct.

And they rebooked him through on U.S. Air Flight 473 from Harrisburg to Pittsburgh.

Judge TJOFLAT. On the 14th?

The WITNESS. On the 14th.

Judge TJOFLAT. And what——

The WITNESS. I have to look up the times on that.

OK. Again, they did not send us the times on that in the record.

Judge TJOFLAT. So just put zeros down?

The WITNESS. Just said O-O-O-O.

Judge TJOFLAT. OK.

The WITNESS. At 7:45 a.m. on the 10th of September, again handled by Eastern Miami Res office, Eastern Flight 176, coach class, Miami-Washington, on the 10th of September was canceled.

Also U.S. Air Flight 169, just taking it out of the records since it was already showing as no op, was canceled, Harrisburg to Pittsburgh. Basically, they were just cleaning up the record.

They booked at that time Eastern Flight 200, Y class, Miami-Washington, for the 11th of September, leaving at 6:50 p.m., arriving Washington at 9:00 p.m.

Then they updated the record to show U.S. Air Flight 473, Harrisburg to Pittsburgh, and on this they did get the time. This is for the 14th of September, and it was 3:00 p.m., arriving 3:44 p.m.

Judge TJOFLAT. At 3:44 p.m.?

The WITNESS. Right. Three p.m., arriving 3:44 p.m.

By Mr. Doar:

Q. Does the record show who made that reservation?

Judge TJOFLAT. Didn't the passenger make that one?

The WITNESS. I have got to find it.

Mr. DOAR. Do you want the glass?

The WITNESS. Again, it just shows received P, so we can assume it was the passenger.

By Mr. Doar:

Q. What is the next change?

A. OK. That was at 10:59 a.m. on the 11th of September in the Miami Res office, and this was Betty again, the secretary. She canceled Eastern Flight 200, coach class, Miami-Washington, on the 11th of September and booked Eastern Flight 176, coach, Miami-Washington, on the 11th which left at 3:48 p.m., arriving 6:00 p.m. in Washington.

Judge TJOFLAT. Was it 3:48 to 6:00 p.m.?

The WITNESS. Yes.

By Mr. Doar:

Q. Were there any further changes?

A. No other changes.

Q. Was there any further information on the registration record that you haven't mentioned?

A. Oh, yes, there were some more changes to the record later on, but at that time that was the only thing that Betty changed.

Q. I see. What's the next one?

A. The next at 4:41 p.m. on the 13th of September, and this was handled by our Chicago reservation office who received the call, and they handled this per the passenger. They canceled the U.S. Air Flight 473, coach, from Harrisburg to Pittsburgh, for the 14th.

Also canceled Eastern Flight 739, coach, Pittsburgh-Fort Lauderdale for the 14th.

Judge TJOFLAT. It was 739?

The WITNESS. Seven thirty-nine, coach.

And booked U.S. Air Flight 730, coach, Harrisburg-Washington National, for the 14th, leaving at 11:30 a.m., arriving 12:15 p.m., connecting with Eastern Flight 177, coach, Washington National to Miami, for the 14th, leaving at 2:00 p.m., arriving 4:10 p.m., and that was per the passenger.

Then on the 14th of September at 10:40 a.m., U.S. Air Pittsburgh Office tried to rebook him on Eastern Flight 965, coach, Washington-Miami, which they showed at 1:50 p.m. However, that flight was a no op.

Judge TJOFLAT. They tried to book on what?

The WITNESS. They tried to change his reservation to Eastern Flight 965 which was showing, I guess, to them at 1:50 p.m. which had really been about ten minutes earlier, but because that flight was a no op, we sent them a message back.

Judge TJOFLAT. It was nonoperating?

The WITNESS. Nonoperating, so they kept the reservation intact on Eastern Flight 177, Washington to Miami, at 2:00 p.m.

Judge TJOFLAT. The passenger made the reservation at 4:41 p.m. on the 13th?

The WITNESS. Correct.

By Mr. Doar:

Q. What's next?

A. That was it.

Q. That's the end of it?

Mr. DOAR. That's all the questions I have.

Judge GODBOLD. Judge Tjoflat, do you have any more?

Judge TJOFLAT. Just one or two questions.

Am I correct in interpreting your testimony that on September 1 he had a flight or connecting flights that would get him out of Harrisburg on the 14th at 4:16 in the afternoon?

The WITNESS. No. He had a flight that would get him out at 1:15. He canceled it and changed it to the 4:16 p.m. departure.

Judge TJOFLAT. All right. And would get him into Miami at 9:00 o'clock that night, 9:09?

The WITNESS. Correct.

Judge TJOFLAT. Through Pittsburgh?

The WITNESS. Through Pittsburgh—I'm sorry. Get him into Fort Lauderdale at 9:09 by way of Pittsburgh.

Judge TJOFLAT. And he wound up with a flight that got him into Miami at 4:10?

The WITNESS. That is correct.

Judge TJOFLAT. Okay.

Mr. DOAR. One final question.

By Mr. Doar:

Q. On the first line of exhibit 43, after the received from the passenger, there seems to be some ticket information and then on the second line there seems to be a price. What is that? Do you know?

A. OK. The ticketing information here shows what the final ticketing was which shows T slash the 12th of September which means that's the day that he was ticketed, on the 12th of September.

The price is $169, F-28 meaning the kind of fare. That is the code for the fare that was offered, and 4-J meaning the person that actually quoted it.

Judge **Tjoflat**. And that is for the ticket that he ultimately got to fly from Orlando to Baltimore?

The **Witness**. Right.

Judge **Godbold**. Does that do it, Mr. Doar?

Mr. **Doar**. Yes.

Judge **Tjoflat**. What was that last document, Mr. Doar, the one for A. Hastings? What was that number?

Mr. **Doar**. IC-51.

Judge **Tjoflat**. That's right.

Mr. **Doar**. That is all I have, your Honor.

Judge **Godbold**. Thank you very much, Mr. Washington.

Mr. **Doar**. Thank you, Mr. Washington.

I wanted to call Mr. Murphy.

Judge **Godbold**. Mr. Who?

Mr. **Doar**. Mr. Murphy for one or two questions.

Judge **Godbold**. Have you released Mr. Simons and Mr. Miller?

Mr. **Doar**. Yes, I have.

Judge **Godbold**. OK.

The **Clerk**. Mr. Murphy, you are, of course, still under oath.

You may be seated and state your full name for the record.

The **Witness**. Yes, sir.

Judge **Godbold**. Mr. Murphy, I call to your attention that the same provisions concerning confidentiality that have been read to you before still apply.

TESTIMONY OF LAVERNE BOONE BEFORE THE INVESTIGATING COMMITTEE OF THE ELEVENTH CIRCUIT COURT OF APPEALS

VOLUME XIX—WITNESS BOONE

The **Witness**. Laverne Boone.

Judge **Godbold**. Ms. Boone, you have not testified before this committee before, have you?

The **Witness**. No, sir.

Judge **Godbold**. Before you begin, the committee calls to your attention that by law these proceedings are confidential.

Title 28, section 372(c)(14) of the United States Code reads this way: "All papers, documents and records of proceedings related to investigations conducted under this subsection," and this is such a proceeding, "shall be confidential and shall not be disclosed by any person in any proceeding."

The **Witness**. (Nods head affirmatively.)

Laverne Boone, called as a witness, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Webb:

Q. Ms. Boone, by whom are you employed?

A. Eastern Airlines.

Q. Can you keep your voice up and speak a little bit closer into the microphone so we can hear you better?

In what capacity are you currently employed by Eastern?

A. I'm supervisor of ticket control and custodian of records.

Q. How long have you held that position?

A. Two weeks.

Q. And that would be back sometime in September of this year?

A. Yes.

Q. Prior to that time, were you in that position in an acting capacity?

A. Yes. Since July 1st.

Q. And who was your immediate predecessor in the position of supervisor of ticketing and custodian of records?

A. Richard Lowe.

Q. Is Mr. Lowe still with Eastern Airlines?

A. Yes, he is.

Q. Did he receive a promotion?

A. Yes.

Q. And you filled his slot?

A. Yes.

Q. Were you served with a subpoena on behalf of Eastern Airlines to produce to this committee today certain records relating to air travel for Mr. Borders and Mr. William Dredge?

A. Yes.

Q. And you were asked in the subpoena to produce records for William Borders for flights between Washington, DC and Miami, Florida for the period April 9, 10, 11 and 12, 1981.

Did you find any such records in your search?

A. Yes. I have records for——

Q. I'm talking about for April 9, 10, 11 and 12.

A. Not April.

Q. None for April?

A. No.

Q. The next period you were asked to search for was May 3, 4, 5 and 6, 1981.

Did you find any records for Mr. Borders for travel during that period?

A. Yes. On May 5th.

Q. You brought those records with you here today?

A. Yes, I did.

Q. I show you what I have premarked as IC exhibits 2025, 2026, 2027, 2028, 2029 and 2030.

Are those the records relating to Mr. Borders' travel in May of 1981?

A. Yes.

Q. Now, can you look first at exhibit 2025? Tell the committee, please, what that record is.

A. This record is a header card that identifies——

Judge TJOFLAT. A what?

The WITNESS. A header card that identifies the origin and destinations of the tickets pertaining to this flight.

By Mr. Webb.

Q. Is that a card used in the filing of Eastern Airlines to designate the flights for which the records are being maintained?

A. Yes.

Q. So in your files you have a header card like 2025 and behind that you would have the information for the flight shown on 2025?

A. Yes.

Q. And then the next exhibit is 2026.

Will you tell the committee, please, what is that document?

A. This document is a passenger coupon for the first leg of a round trip ticket.

Q. Coupon number one?

A. One, yes.

Q. In whose name is that ticket?

A. It's W.A. Borders.

Q. Can you determine from 2026 the flight pattern for which the ticket was issued?

A. Yes. Washington National, Miami, Washington National.

Q. And what's the flight number?

A. Flight number is 177.

Q. Is there a return shown on the exhibit marked as 2026?

A. It's an open return.

Judge GODBOLD. That is for what date?

By Mr. Webb.

Q. For what date is the——

A. Whenever the passenger chooses to come back. It's open.

Judge GODBOLD. I beg your pardon. I meant the leg going down to Miami.

The WITNESS. That's May 5th.

Judge GODBOLD. Okay.

By Mr. Webb:

Q. Now, the next exhibit is 2027?

A. Yes.

Q. Would you identify that for us?

A. This is a passenger name reservation record showing that a W.A. Borders was booked on Eastern flight 177 in first class travel from Washington to Miami on May 5th.

Q. Now, is this passenger reservation history marked as 2027 reflecting the reservation that is shown by, the flight which is shown by 2026?

A. Yes, it supports that travel.

Q. Supports that travel?

A. Yes.

Q. Looking at 2027, do you see the name Mr. Borders then right above the dotted line about two-thirds of the way down the page? Is that right?

A. Yes.

Q. Can you tell us when flight 177 departed from Washington and when it was scheduled to arrive in Miami?

Judge **Tjoflat**. Wait a minute. Departed and scheduled to arrive or scheduled——

Mr. **Webb**. Excuse me.

Scheduled to depart and scheduled to arrive.

The **Witness**. It was scheduled to depart at 13:35, and it was scheduled to arrive at 15:52.

By Mr. Webb.

Q. That would be military time?

A. Yes.

Q. Can you determine from 2027 when the reservation was made in Mr. Border's name for that flight?

A. It was made on May 4.

Q. Can you determine the time on May 4th?

A. Twenty forty-three Zulu time.

Q. And then looking along that line further, I see the letters W.A.S. 202-387-1100-B. What does that entry mean?

A. That's a Washington number from a business phone.

Q. What purpose is that number there for?

A. For call back purposes. If a flight were canceled or for any other reason we had to get in touch with the passenger.

Q. And the end of the line shows Ms. Rogers. What does that indicate to you?

A. That is the person who booked the reservation.

Q. Now, are the documents that I have had marked as exhibits 2025 and 2027 documents that are prepared by Eastern Airlines as part of its regular business activities?

A. Yes.

Q. And are they kept and maintained by Eastern Airlines?

A. They are.

Q. In their regular practice?

A. Yes.

Mr. **Webb**. I would offer for the committee's consideration IC exhibits 2025, 2026 and 2027.

Judge **Godbold**. They are received.

[Thereupon, exhibits number IC-2025 through 2027 were tendered and received by the committee.]

By Mr. Webb.

Q. Now, the other documentation that we had for the travel in May was documents that we marked as 2028, 2029 and 2030.

If you could get those in front of you.

What is IC-2028?

A. That's a header card indicating travel for passengers from Miami to Washington to flight 198.

Q. On what day?

A. On May 5th, 1981.

Q. Same say then as the preceding exhibit that we looked at?

A. Yes.

Q. What is the next exhibit, IC-2029?

A. It's coupon two of the round trip ticket, and this one was good for travel from Miami to Washington.

Q. So this is the second coupon that goes with the ticket for which 2026 is the first coupon?

A. Yes.

Q. In whose name is 2029?

A. W. A. Borders.

Q. Can you determine from looking at 2029 on which flight it was used?

A. On flight 198.

Q. First class?

A. Yes.

Q. Can you determine on what day it was used?

A. It was used on May 5th.

Q. That's from your header card?

A. Yes.

Q. Looking at the next exhibit, 20——

Judge Tjoflat. Was it used May 5th on that flight?

The Witness. Yes.

By Mr. Webb:

Q. Looking at the next exhibit, IC-2030, What is that? Is that another passenger reservation list?

A. Yes.

Q. Do you find Mr. Border's name on that?

A. Yes.

Q. Does this passenger reservation history marked as 2030 support the ticket that's marked as 2029?

A. Yes.

Q. Looking at the entry on 2030 for Mr. Borders, can you explain that entry to the committee, please?

A. It was booked on Eastern flight 198 first class from Miami to Washington on May 5th. It was scheduled to depart at 1850 and scheduled to arrive at 2100.

Q. Depart from Miami and arrive in Washington National?

A. Yes.

Q. And looking a little further along that line, can you determine——

Judge Tjoflat. Scheduled to arrive when?

The Witness. At 2100.

By Mr. Webb:

Q. Looking further along, can you determine when the reservation was made?

A. It was made at 2047 Zulu time on May 5th.

Q. Can you determine from here it was made?

A. It was made from Miami.

Q. Is there a call back number listed?

Judge Godbold. Excuse me. Help me a little bit here. The reservation was made at what time?

The Witness. It's 2047 Zulu time.

Judge Godbold. What is Zulu? Military time?

The Witness. No. I think it has to do with Greenwich Village time.

Mr. Webb. I think we have had other evidence that Zulu time is Greenwich mean-time.

Judge Godbold. But the departure at 1850 is military time?

The Witness. Yes.

Judge Tjoflat. Six hours, or five, depending on daylight saving or standard?

The Witness. I'm not sure, sir. My understanding is it's 4 hours, but I wouldn't swear to it because I don't really understand it.

Judge Godbold. OK. Thank you.

Does it show where the reservation was made from?

The Witness. Out of Miami.

By Mr. Webb:

Q. On May 5th?

A. Yes.

Q. What a Call back number left by the person making the reservation?

A. Yes. It's a Miami number, and the home is a reference.

Q. Do you see that by looking at the H after the number?

A. Yes.

Q. And what's the number that it shows, 305——

A. Nine four five-nine nine three nine.

Judge TjoFlat. Nine nine what?

The Witness. Three nine.

Mr. Webb. I believe the committee has received evidence that that is Mr. Dredge's number.

I would offer for the committee's consideration then exhibits 2028, 2029, and 2030.

Judge Godbold. I think you had better establish your business records. You did for the first three.

By Mr. Webb:

Q. On exhibits 2028, 2029, and 2030, are these documents prepared by Eastern Airlines in the course of its regular business activities?

A. Yes.

Q. Is it the regular practice of Eastern Airlines to prepare documents like 2028, 2029, and 2030?

A. Yes.

Q. Mr. Webb. Offer them for the committee's consideration.

Judge GODBOLD. They are received.

[Thereupon, exhibits number IC-2028 through 2030 were tendered and received by the committee.]

By Mr. Webb:

Q. Now, you were also asked in this subpoena to bring with you documents relating to travel in the name of Mr. Borders for Eastern Airlines for the period July 9, 10, 11 and 12, 1981.

Did you find any such documents?

A. Yes.

Q. I show you what I have marked as IC exhibit 2032. Is that the document relating to travel on those dates?

Judge TJOFLAT. Five three?

Mr. WEBB. Two zero three two.

Judge GODBOLD. Are you taking 32 before 31?

Mr. WEBB. Yes, sir.

Judge GODBOLD. All right.

By Mr. Webb:

Q. Can you identify exhibit 2032 for us?

A. This is a passenger name reservation record.

Q. In whose name?

A. W. Borders.

Q. For what date?

A. For July 11th.

Q. 1981?

A. Yes.

Q. Looking at this document, can you interpret it for us, Please? Tell us what flight?

A. He was booked on Eastern flight 171 in first class from Washington to Fort Lauderdale on July 11th. Scheduled time of departure was 8:30 and scheduled time of arrival was 11:27.

Q. Again, military time?

A. Yes. The reservation was made on July 10th from a D.C. phone. It's a business number.

Q. What's that number?

A. The number is area code 202-387-1100.

We also have another Washington number, area code 202-398-6321, and that's a home number.

The reservation was made by Ms. Rogers.

He was ticketed on July 11th.

Q. Received the ticket on July 11th?

A. Yes.

Q. Now, did you make any search through the records of Eastern Airlines to determine if you could find a ticket in the name of Mr. Borders for flight 171——

Judge TJOFLAT. A ticket was issued on July 11th?

The WITNESS. Yes.

By Mr. Webb:

Q. Did you make any search through Eastern Airlines' records to determine if you could find a ticket issued to Mr. Borders or in the name of Mr. Borders for flight 171 for July 11, 1981?

A. Yes, we did, but the reel that these documents are filmed on could not be located.

Q. So you have not been able to locate the ticket that was issued——

A. Right.

Q. For that flight on July 11th?

A. Right.

Q. Continuing and looking——

Judge **Godbold**. Mr. Webb, I need some help. I can't find Mr. Borders' name on 2032. Where is it?

Mr. **Webb**. It's the second name below the dotted line.

Judge **Godbold**. I now find it. Thank you.

By Mr. Webb:

Q. Continuing with exhibit 2032, Ms. Boone, was there a reservation made for a return flight in the name of Mr. Borders?

A. Yes. There was a reservation made on Air Florida's flight 91 coach from Miami to Washington for July 12th.

Q. If I could stop you for just a minute.

Looking at the information next to Mr. Borders' name, I see the Eastern flight 171 and then below that there's the word arunk, A-R-U-N-K?

A. Yes.

Q. What does that mean?

A. It means ground transportation is going to be between one airport and the other when it's not the, the destination airport is not the same as the origin airport.

Q. Would you continue with your description?

Judge **Tjoflat**. Between airports at departure or landing and arriving?

The **Witness**. Between the departing airport—the arrival airport and the departing airport, because he arrived in Fort Lauderdale and he's departing out of Miami.

Judge **Tjoflat**. Miami to Fort Lauderdale and changing airports and going to Washington?

Mr. **Webb**. Fort Lauderdale to Miami.

Judge **Tjoflat**. Fort Lauderdale to Miami.

Mr. **Webb**. That's the arunk is the change to departing from Miami as opposed to Fort Lauderdale.

By Mr. Webb:

Q. Is that right?

A. Yes. He will have to use ground transportation.

Q. Would you continue describing the return flight for us, please? You said it was flight 91 on Air Florida?

A. Right. For July 12th. Scheduled time of departure was 11:10. Scheduled time of arrival 14:15.

Q. And this is Miami to Washington National?

A. Yes.

It was booked on July 10th at 17:44 Zulu time. He was holding a space on Air Florida's flight 133, but that was canceled.

Q. Can you determine what the scheduled departure time for Air Florida flight 133 was from exhibit 2032?

A. No.

Q. Do you know the flight pattern for Air Florida flight 133? Can you determine that from exhibit 2032?

A. D.C. to Fort Lauderdale.

Q. Could you keep voice up?

A. Yes. I'm sorry.

Q. Can you determine when the passage on flight 133 of Air Florida was canceled?

A. On July 11th.

Q. Now, looking at exhibit 2032, can you determine whether in fact air travel occurred in accordance with this reservation?

A. No.

Q. You need the ticket for that?

A. Exactly.

Judge **Tjoflat**. You can't tell whether air travel occurred either way?

The **Witness**. No. Not from this record.

By Mr. Webb:

Q. Is IC exhibit 2032 a document that is prepared by Eastern Airlines as part of its regular business activities?

A. Yes.

Q. Is it the regular practice of Eastern Airlines to prepare this document?

A. Yes.

Mr. **Webb**. I tender for the committee's consideration IC exhibit 2032.

Judge **Godbold**. Received.

[Thereupon, exhibit number IC-2032 was tendered and received by the committee.]

By Mr. Webb:

Q. Now, you were also asked, Ms. Boone, to bring with you documents relating to travel on Eastern Airlines in the name of William Dredge for the period from May 26th through May 29th, 1981.

Did you locate any such documents?

A. Yes.

Q. I show you what I have premarked as IC exhibit 2031.

Can you identify that for me, please?

A. This is a passenger reservation list, and there's a booking for a W. Dredge.

Q. Could you describe where Mr. Dredge's name appears on that document for us, please?

A. It's the second from the bottom.

Q. Now, can you determine from IC-2031 what flight the reservation was on?

A. Yes. He was booked on Eastern flight 158 first class Miami-Washington on May 28th. Scheduled to depart at 8:00 o'clock. Scheduled to arrive at 10:12. It was booked on May 27th at 22:44 Zulu time. The reference phone number was a Miami number.

Judge Tjoflat. Twenty-two forty-seven?

The Witness. It's 22:44 Zulu.

Area code 305-945-9939 is the home number. We also have a Washington number area code 301-530-1533. The passenger did the booking.

By Mr. Webb:

Q. Is that also a home number?

A. Yes. That's a home number also.

Q. Are these numbers, these are numbers you received from the passenger as a place where you can contact the passenger?

A. Yes.

Q. Or the person making the reservation. The number you received from the person making the reservation where you could contact the passenger?

A. Where we could contact the passenger.

Q. Can you determine from where the reservation was made for flight 158?

A. It was made out of Chicago.

Q. Can you explain that for us, please?

A. C.H.I. is our code for Chicago, and S.U. means the supervisor handled this transaction, and P.P. is the supervisor's sign.

Q. Well, does that mean that somebody actually went to Chicago to make the reservation?

A. No, it does not.

Q. Would you explain that, please?

A. Any part of our reservation system, if the initial point of calling, if those agents are tied up, then the call can be intercepted along the line.

Q. And go to some other place to be taken as a reservation?

A. Exactly.

Q. Does IC exhibit 2031 also show a return reservation in the name of Mr. Dredge?

A. Yes. It's on Eastern flight 177 for May 29th. Scheduled to depart at 13:35.

Q. Depart from where?

A. From Washington, D.C.

Q. OK.

A. To Miami. Scheduled to arrive at 15:52.

Q. And that reservation would have been made at the same time——

A. Yes.

Q. As the reservation on flight 158 was made?

A. Yes.

Q. Now, is there any other information shown on exhibit 2031 under the name of Mr. Dredge relating to other flights?

A. He was also holding a reservation on Eastern flight 473 Washington-Miami for May 28th, but that space was canceled.

A. When was that space canceled?

A. The space was canceled on May 28th.

Q. Is exhibit 2031 a document that is prepared by Eastern Airlines in the regular course of its business?

A. Yes.

Q. Is it the regular practice of Eastern to prepare this document?

A. Yes.

Mr. Webb. I tender exhibit 2031 to the committee for its consideration.

Judge GODBOLD. Received.

[Thereupon, Exhibit number IC-2031 was tendered and received by the committee.]

By Mr. Webb:

Q. The subpoena also asks, Ms. Boone, for you to produce any other records that Eastern Airlines might have for travel under the name of Mr. Borders or William Dredge for the period January 1, 1981 to October 30, 1981.

Did you cause a search to be made during that time period for other records?

A. No, because our facilities and our manpower is limited, and we limit investigation to 5 days.

Q. Do you know if those records would still be available?

A. 1981?

Q. For 1981.

A. Yes.

Q. But you haven't searched for them?

A. No.

Judge TJOFLAT. For what dates is that?

Mr. WEBB. The subpoena called for records from January 1, 1981 through October 30, 1981.

Judge TJOFLAT. For Mr. Borders?

Mr. WEBB. And for Mr. Dredge.

By Mr. Webb:

Q. I understand from your testimony, Ms. Boone, It's Eastern Airlines' practice to only search for a 5-day period?

A. Yes. Or we will allow law enforcement agencies to do their own investigation. We will avail our equipment to them.

Q. That's because of the resources available to Eastern to conduct that research?

A. Right.

Mr. WEBB. I have nothing further of Ms. Boone.

Judge GODBOLD. Any questions from members of the committee?

Judge POINTER. You indicated that Mr. Dredge apparently held on May 28th, and I am referring to IC Exhibit 2031, that he apparently held two reservations on two separate Eastern flights for that date and then ended up canceling one of them. Is that right?

The WITNESS. Yes.

Judge POINTER. He held one for a flight that was due to leave at 8:00 o'clock in the morning on the 28th, and he held another that was due to leave at what time?

The WITNESS. On flight 473. That's the one that was canceled.

Judge POINTER. And what time was that due to depart?

The WITNESS. I don't have that information, Sir.

Judge POINTER: All right. And he canceled this second flight, and although you do not have the ticket information, apparently the 8:00 o'clock flight was retained.

The WITNESS. Right.

Judge POINTER. Then if you go back on Exhibit 2032 dealing with Mr. Borders, it was not clear to me what you said about an Air Florida flight being canceled or his having had two reservations or bookings.

Could you explain that?

The WITNESS. Yes. He also had a reservation on Air Florida's flight 133. And he had a reservation on Air Florida's flight 91. The 91 is the confirmed. The 133 was the canceled.

Judge POINTER. Do you have the time of day that 133 would have left?

The WITNESS. No.

Judge POINTER. So if there is a cancellation in that way, you don't record the expected time of departure or arrival?

The WITNESS. Exactly.

Judge GODBOLD. Was there an audible answer to that? I didn't hear it.

Judge POINTER. She said that is correct.

Judge GODBOLD. Any further questions?

Judge TJOFLAT. I have one.

Is it your testimony that your records show that Mr. Borders flew from Washington to Miami on May 5, 1981 and returned the same day?

The WITNESS. Yes, sir.

Judge TJOFLAT. All right.

Judge GODBOLD. Anything further?

Mr. WEBB. Just one question I neglected to ask.

By Mr. Webb:

Q. On exhibit 2031, the passenger reservation history for Mr. Dredge, did you cause a search to be made of Eastern Airlines for a ticket reflecting travel in accordance with that reservation?

A. Yes.

Q. Did you find any ticket?

A. No, because these reels were also missing.

Mr. Webb. That's all that I have.

Judge Godbold. All right. You may step down.

Thank you very much.

The Witness. OK.

Mr. Webb. That's all the witnesses that we have for today.

There are a few housekeeping matters, I believe. Mr. Doar wanted to tender some documents.

If I could have a few minutes to tell him that we finished with Ms. Boone.

Judge Godbold. Do you mean tender them in open court or what?

Mr. Webb. I believe there were some documents. One of them was the affidavit we got from Richard Lowe.

Judge Godbold. We will remain on the bench for a minute while you go and talk with Mr. Doar.

Judge O'Kelley. What is that phone number?

Mr. Webb. I do not know the phone number.

The Clerk. I can get it just a minute.

[Thereupon, a short recess was had and then the proceedings continued as follows.]

Mr. Webb. If I could go ahead. We have an affidavit from Richard Lowe who was in the position of supervisor of ticketing and custodian of records for Eastern Airlines prior to Ms. Boone and was the witness who appeared here in May as the custodian of the Eastern Airlines' records.

If the committee will recall, there were some open questions about the use of coupons for travel by Judge Hastings in June of 1981. Exhibit 35-A showed that there were two coupons.

Mr. Lowe was able to say that coupon one had been used for a flight from Miami to Washington on June 17, 1981, but he did not know what happened on coupon two.

He went back and researched his records and concluded from his records that coupon two was used but not for the scheduled flight and that it was reasonable to conclude that it was used in June of 1981.

But Eastern Airlines had no further information as he set forth in his affidavit.

The other question related to IC exhibit 50 which was flight coupon one of an Eastern Airlines ticket in the name of Judge Hastings for travel in September of 1981.

It showed travel on September 11, 1981 from Miami to Washington, and then there was a question about coupons two, three and four, travel into Harrisburg, Pennsylvania and then return.

Mr. Lowe did not know that had happened with coupons two, three and four. He went back and searched his records, was able to conclude that they were in fact used but not for the scheduled flights, and he set forth the information in his affidavit.

Judge Godbold. Mr. Lowe is the Eastern Airlines representative who testified?

Mr. Webb. Last May. And the exhibits were put in through Mr. Lowe. He then went back—he researched the information that week; called me; I reported to the Committee at the conclusion of our proceedings in May. A suggestion was made that we get an affidavit from Mr. Lowe, and that's what we have here.

Judge Godbold. All right, sir.

Mr. Webb. He's the one that did the research on this, and that's why we are using his affidavit.

Judge Godbold. All right. It is received.

Anything further, Mr. Doar?

Mr. Doar. The other thing I had for today, your honor, was to give to the committee a document that has been identified as IC-291 which is a certified copy. That's the original, your honor. We may be able to get you to hand back the original and keep a copy here for the——

IC-291, your honor, is a certified copy of an order of the United States District Court for the District of Columbia reflecting that an order was entered on July 7, 1981 in a case involving Borders versus President Ronald Reagan, Civil Action Number 81-1312.

The committee had asked us to get the date of that order.

It reflects the fact that the district court ruled that the President of the United States had acted beyond his powers in attempting to remove Mr. Borders as a member of the District of Columbia Judicial Nomination Commission, and the order provides in the last paragraph that the Commission in the District of Columbia shall continue to grant William A. Borders, Jr. all rights and privileges or monuments as a member of the Commission.

I also have, although I did not make copies, but I also have to offer into the record IC-292 and 293. Two ninety-three is the complaint filed on June 8,, 1981 with respect to civil action 81-1312 and the opinion of the district court filed July 7, 1981 in the same case.

Judge GODBOLD. That is 292?

Mr. DOAR. That is 292.

Judge GODBOLD. All right.

I'm sorry. What is 292 and what is 293?

Mr. DOAR. Well, could you just excuse me for one minute because I think——

Judge GODBOLD. Yes.

Mr. DOAR. I would like to ask leave, instead of having these documents marked 291 to mark them 2291, 2292 and 2293.

Judge GODBOLD. All right. Twenty-two ninety-one is the order?

Mr. DOAR. That is correct.

Judge GODBOLD. That is received.

[Thereupon, exhibit number IC-2291 was tendered and received by the committee.]

Judge GODBOLD. What is 2292?

Mr. DOAR. That's the opinion dated July 7th.

Judge TJOFLAT. Wait a minute. The opinion?

Mr. DOAR. The opinion.

Judge GODBOLD. What is 2293?

Mr. DOAR. Twenty-two ninety-three is the complaint.

Judge GODBOLD. All right. Then 2291, 92 and 93 are received.

[Thereupon, exhibits number 1C-2292 and 2293 were tendered and received by the committee.]

Mr. DOAR. I did not make copies of the complaint or the opinion, but I did make it for the order.

Judge GODBOLD. Okay.

Mr. DOAR. That's all we have for today, your honor.

Judge GODBOLD. The proceedings will be in recess.

[Thereupon, the proceedings were adjourned at 3:40 o'clock p.m., to reconvene as directed.]

VOLUME XXII—WITNESS BOONE

Recalled as a witness, being first duly sworn, testified further as follows:

FURTHER DIRECT EXAMINATION

By Mr. Doar:

Q. Ms. Boone, you testified here before, have you not?

A. Yes.

Q. And could you keep your voice up in a loud clear voice so everyone in the courtroom can hear you?

I wonder if you would confirm for me that you were asked as a representative of Eastern Airlines to search Eastern's airline records and provide to us certain information from particular passengers' registration records or ticket information.

A. Yes.

Q. And I would like to place before you exhibits 2032 to 2045 and exhibits 2350 through 2363 and ask you if you could look through those exhibits and tell me if those documents are copies of records that are maintained by Eastern Airlines in the regular course of their business.

Q. Yes, they are.

A. And do they relate to registration or ticket information for passengers by the names of William Borders, Alcee Hastings and William Dredge?

A. Yes.

Q. And I believe that you also searched for certain ticket information or registration information with respect to Jesse McCrary?

A. Yes.

Q. Is that correct?

A. Yes.

Q. Now——

Judge **Tjoflat**. Excuse me, Mr. Doar. What was the first one, 2032 through what?

Mr. **Doar**. It's 2032, your honor, through 2045.

By Mr. Doar:

Q. Now, I would just like to——

Mr. **Doar**. If I could stop for a minute, your honor.

Because these documents are so difficult to read in their unenlarged state, we have enlarged certain of the exhibits, but first I would like to tender these exhibits to the committee.

Judge **Johnson**. The originals.

Mr. **Doar**. The originals, the ones that were produced, and then make reference to certain enlarged copies and distribute those to the committee so that they could follow it a little easier.

Judge **Godbold**. Has she confirmed that these are copies of the records relating to these passengers? You asked her if she searched her records.

By Mr. Doar:

Q. Do these records relate to the passengers, Mr. Borders, Mr. Hastings, Mr. Dredge?

A. Yes.

Q. And did you find some records for a person named McCrary?

A. McCrary.

Q. McCrary, yes.

Mr. **Doar**. I would like to tender these exhibits to the committee.

Judge **Godbold**. And these are copies of those records?

By Mr. Doar:

Q. These are copies of your original records?

A. Yes.

Judge **Godbold**. They are received.

[Thereupon, exhibits number IC-2032 through 2045 and 2350 through 2363 were tendered and received by the committee.]

Mr. **Doar**. Now, there is one exhibit that appears several times, and I would like to hand up to the committee exhibit 2036, although I will ask the witness about another exhibit just because that's the same type of exhibit.

By Mr. Doar:

Q. Looking at 2033, can you tell us what that form is?

A. This is a header card that we use to identify the origin and destination flight, the flight number, the class of service and the date of travel.

Q. That's what you called a header card?

A. Yes.

Q. And that contains certain information about a particular flight?

A. Right.

Q. And does that particular card contain any reference to a particular passenger?

A. No, it does not.

Q. And why was it that in response to the subpoena that you delivered the header cards along with the registration information and the ticket information?

A. This is a normal courtesy so if there is some question, or you can't read the flight number on the actual flight coupon, then we give you the header card from which that ticket was pulled.

Q. So that this header card related to an underlying ticket on a particular flight?

A. All the tickets on flight 158.

Q. All of the tickets on flight 158 are found below a particular header card for that flight?

A. Yes.

Q. Now, what is a registration history?

A. A passenger reservation history is the booking of travel for a particular passenger.

Q. And are these reservation histories maintained in Eastern's computer?

A. It's on microfilm.

Q. On microfilm?

A. Yes.

Q. And what does it contain?

A. It contains the date of booking, the date of travel, the origin and destination, the time of departure and arrival for flight time, the time that the booking took place, the person who identified himself as the one booking the reservation and the city where the reservation was booked, what kind of booking it was, whether it was an agency sale or reservation sale, and an agent signed to identify the person who actually booked it for Eastern Airlines.

Q. Are these reservation histories in a code?

A. Yes.

Q. Now, I would like to ask you a couple of questions about the code so that when we go over the histories with the committee it will be able to be easier for the committee to follow you explanations.

Often you have within a bracket, bracket, close bracket, an open bracket, a closed bracket the numbers one and later on a two and a three and a four in sequence within the registration history. Could you tell us what those various numbers are meant to signify?

A. The one or the two, depending on the number of passengers traveling in that reservation, is for the number of seats that we are telling the computer we need, and the computer does confirm.

The other numbers are just symbols in the computer that mean nothing to the record.

Q. Okay. Now, when a passenger calls up and gives a number of reservation requests, that is for a trip that would take them to more than one city——

Judge TJOFLAT. On different flights.

By Mr. Doar:

Q. On different flights.

Do the flight reservations for each particular segment of the trip which are contained within or follow a number, number one or number two or number three, within the reservation history?

A. Not each segment, no.

Q. But each particular reservation change?

A. Yes.

Q. Okay. Now, when you read the reservation history, does the final reservation booking or the final reservation that is made before the flight, does that appear directly opposite the name of the passenger?

A. Yes.

Q. And does that also appear at the end of the reservation legend ~~at~~ the bottom?

A. Not necessarily. Sometimes it does.

Q. Okay.

Mr. DOAR. Now, I would like to take, if the court please, an example. I would like to get out IC-2350, if you could, IC-2350 and IC-2352 and IC-2361.

I would like to hand to the committee IC-2350.

IC-2350, members of the committee, has been retyped by members of my staff to make it easier to read.

I would also like to hand to the committee exhibit 2361 which is an enlarged 2361 and also 2352.

I would like to give you, Ms. Boone, an enlarged copy as well so that——

By Mr. Doar:

Q. Now, if you would take IC-2352 and 2361—and I would ask the committee to put those two exhibits together. I would like to ask you if, first, if exhibits 2352 and 2361 are sequential pages of reservation records of Eastern Airlines which bear the numbers, page numbers 12209 and 12210?

A. Yes.

Q. And where do you find that number on the reservation record?

A. Up in the upper right-hand corner.

Q. And I'm pointing to the upper right-hand corner of the page. Is that correct, where you mean?

A. Yes.

Mr. DOAR. I wonder if the members of the committee can locate 12209 and the 12210 at the top of the page. It's up on the right here.

Judge O'KELLEY. Just a moment.

Mr. DOAR. One two two zero nine is not as clear as the 12210.

By Mr. Doar:

Q. Will you confirm that that is page 12209?

A. Yes.

Q. Does that page contain information with respect to a passenger A. Hastings?

A. Yes.

Q. And where is that information contained on 2352 and 2361?

A. It starts at the bottom of 2352 and it continues at the top of 2361.

Q. So that if you were reading the reservation information for passenger Hastings, would you read the bottom of 2352 and the top of 2361?

A. Yes.

Q. And does that reservation history continue on so that the last symbol is on about the 12th line down on page 2361 which contains at the end of the line of writing parenthesis R.C.V.D., close parenthesis, P.S.G.R.?

A. Yes.

Q. Just for the committee's benefit, what do those symbols mean?

A. Received passenger.

Q. Now, if you would turn to 2350, and I ask you if that is a reservation history for passenger Hastings?

A. Yes.

Q. And what page of your reservation records does this come from?

A. It's on page 27.

Q. Okay. Now, I would like to ask you if the reservation information that's posted on 2350 is the same reservation information that's posted on 2352 and 2361?

A. Yes.

Q. And could you tell the committee the explanation for why the reservation history appears on different pages in your records?

A. Because sometimes if we don't have the passengers' names spelled correctly we know the flight number. We can go on the page with the flight and find the passenger and so, as long as there are many segments for each flight number that that passenger is listed for, we can find his name.

Q. All right. Now, on 2350, the passenger's name is listed under a particular flight; isn't that correct?

A. Yes.

Q. And what flight is that?

A. Twenty-one.

Q. And at the top of the page, there's a flight 4 on May 5th?

A. Right.

Q. And what relationship is flight 4 to this passenger reservation history?

A. The passenger originated on flight 4.

Q. And if you could read to me the very top line of 2350—excuse me. Yes. Of 2350, where it says flight. Can you see that?

A. Yes.

Q. Would you do that?

A. Flight 4, 5 May, Miami-Newark.

Q. And this is for the year 1981?

A. Yes.

Judge **Tjoflat**. Wait a minute. Mr. Doar, the top line is Hastings Slash A.C. Eastern Airlines Zero Zero 21Y.

Mr. **Doar**. I'm referring to the very top of the page, your honor. You are looking at the typewritten page.

Judge **O'Kelley**. You are talking about the entry above that?

Mr. **Doar**. I'm talking about the entry above that.

Judge **Tjoflat**. You are talking about on the photostat?

Mr. **Doar**. Yes, your honor.

Judge **Tjoflat**. Why don't we start over?

By Mr. Doar:

Q. Could you read the top line of the photostat?

A. Flight 4, 5 May, Miami-Newark.

Q. And then could you drop down one line and continue reading across that line?

A. Where it starts with Hastings?

Q. No. Just below Miami-Newark there. Just right below the line. Where you have the flight information.

A. Flight 4, Miami-Newark, 5 May.

Q. And what is the 18:55, 21:42?

A. The 18:55 is the departure time, and 21:42 is the arrival time.

Q. And what are the symbols that follow that are broken by slash lines?

A. Mr. Doar, if I might, this record does not pertain to the Hastings.

Q. Does not?

A. No.

Q. Okay. Now, below that, and now referring to the record that pertains to Judge Hastings, could you take that reservation record and read to us going very slowly——

Judge Tjoflat. Should we follow the typewritten part or the photostat in this?

Mr. Doar. I would refer to the typewritten part decause it's easier to follow.

The Witness. Eastern flight 21Y——

Mr. Doar. Let me just say, your honor, that if you want you can follow this on the 2352 and the 2361 because that's a little clearer than the 2350.

Judge Tjoflat. Than the typed part?

Mr. Doar. No. The photostated part.

Go ahead.

The Witness. Eastern 21Y, Laguardia to Miami, May 6th. The 1400 is the departure time, and 1639 is the arrival time, H.K. Slash N.N. is hold confirmed, need one.

Judge Tjoflat. Hold confirmed, needs one?

The Witness. Yes.

The slash two, the two has no significance.

The reservation was made in Miami by general sales agent, and the agent's sign is D-1.

The transaction happened at 1458 Zulu time.

By Mr. Doar:

Q. Let will he stop you there. The 1458 Zulu time is Greenwich Mean Time?

A. Yes.

Judge Tjoflat. G.S. is what?

The Witness. General sales.

Mr. Doar. General sales.

Judge Tjoflat. And the agent's sign is D-1?

The Witness. Yes.

By Mr. Doar:

Q. The 1458 Zulu time, if you wanted to get Miami time, you would subtract four hours from that?

A. Yes.

Judge Pointer. Because this is during daylight savings.

By Mr. Doar:

Q. Because this is during daylight saving?

A. Yes.

Q. After the 1458Z, could you continue?

A. Twenty April.

Q. What does that mean?

A. It means the transaction was booked on the 20th of April.

Q. All right.

A. Phone Miami, area code 305-731-8176, is a home number in Fort Lauderdale. Miami, area code 305-350-4289 is the business number. Newark, West Mount Country Club, Paterson, NJ, received Betty Williams.

Q. What does "received Betty Williams" mean?

A. Received means that this reservation was made by Betty Williams.

Q. And what does Newark, West Mount Country Club, Paterson, NJ mean?

A. That's for a contact for the destination city. If we happen to have a cancellation or any change in the flight plan, we need to know how to get in touch with the passenger to advise them of that.

Q. OK. Then what reads next?

A. T.K.T.G. is ticketed on May 5th.

Q. Ticketed on May 5th, what does that mean?

A. It means that the passenger got a ticket on May 5th.

Q. All right.

A. Remarks, advised G. class, fare quote, 469, $469, total Y28 slash Y28 which is a fare quote, per adult, D-1. The D-1 is still the agent from Miami who quoted the fares. April 20th, $344 total, Y28 slash Y28 slash Y, Miami will call, May 1st.

Q. What does that mean?

A. The reservations were made and the ticket will be picked up at our will call desk on May 1st.

Passenger——

Judge Tjoflat. Where is the will call desk?

The Witness. On the record, sir?

Judge Tjoflat. No. Where is the will call desk?

The Witness. It's at the terminal in Miami at the airport.

By Mr. Doar:

Q. Now, the next line, or the next—continue across the line.

A. Passenger ticketed, need reval, needs to be revalidated.

Judge **Tjoflat**. What does that mean?

The **Witness**. There's going to be a change further down in this record, and so the ticket that was going to be picked up on May 1st, information has to be changed on it because there have been some changes.

Judge **Tjoflat**. The ticket was to be picked up on the 1st of May?

The **Witness**. Yes, sir.

By Mr. Doar:

Q. When you say that the ticket was picked up on the 1st of May on that particular line, how does that relate to the ticketing on the 5th of May that comes following Betty Williams?

A. The ticketing for the 5th of May is the actual travel date. This record started on the 20th of April. OK? Then he was going to pick up the ticket on the 1st of May for travel for the 5th of May.

Judge **Tjoflat**. Somebody was going out to the airport on the 1st of May to pick up a ticket?

The **Witness**. Yes.

Judge **Godbold**. What is F.Q. 469?

The **Witness**. Fare quote of $469.

Judge **Godbold**. Well, over to the right we have got 344 total. Why is there a difference?

The **Witness**. That's why the ticket has to be revalidated. There's going to be a change later in this record.

Judge **Godbold**. All right.

The **Witness**. And when you change, then the fare changes.

Judge **Godbold**. OK.

By Mr. Doar:

Q. Now, could you continue reading?

A. Yes. Miami General Sales, and the agent is A.H. at 1919 Zulu on April 20th.

Q. Now, let me just stop you. Does that indicate that about 4½ hours later there was a change in the reservation?

A. Yes, sir.

Q. All right.

A. X.S. is canceled space on Eastern 450 Y.NE which is a coach night flight, Atlanta to Newark for May 5th. It was to depart at 2200 and arrive at 0038.

Q. Could I stop you there?

A. Yes, sir.

Q. Does this X.S. means a cancellation? Does this tell you that when the passenger first made his reservation on May 20th that he made a reservation on flight 450 from Atlanta to Newark and he was now canceling that and changing that reservation?

A. Apparently, because it's not—450 is not in any other part of this record. The 450 was booked at some earlier time.

Judge **Tjoflat**. Prior to April 20?

The **Witness**. Prior to some date. I can't say for sure, because it only appears in this record as a cancellation. We never booked it when the record started off.

By Mr. Doar:

Q. All right, but there was a call before 1919Z time at 1458Z time?

A. Yes. The 1458 started the record.

Q. So it could have been booked at that time?

A. No, Mr. Doar, because it would have been a part of this record.

Q. All right. OK.

A. OK. We are canceling flight 450, Atlanta to Newark, for May 5th. Need one. The two has no significance.

We are canceling space on Eastern's 698Y, New Orleans to Atlanta, for May 5th. It was to depart at 1850 and arrive at 2104.

We are canceling space on Eastern 665Y, Orlando to Miami, for May 10th. Departure is 0655 and arrival is 0740.

We are assigning space on Delta flight 446Y, New Orleans to Newark, for May 5th, departure and arrival time. S.S. in this case means sell sell. Delta has given Eastern the approval to book reservation on their carrier.

We are assigning space on Republic flight 220Y, Orlando-Miami, May 10th, departure and arrival times.

S.S. Again, Republic has given us permission to sell the seat. This reservation was made by Betty Williams.

Q. Now, could I just stop you there? You have referred on a number of occasions to the symbols X.S. which normally follow a number in the reservation history. X.S. means cancel?

A. Yes. X can mean cancel or change. We change names. We cancel space.

Q. And time S relates to space?

A. Yes.

Q. And then an A. S. is an assigned space; is that correct?

A. That's correct.

Q. And these numbers within the brackets one, two, three, four and five with respect to this particular transaction relate to various segments of the trip; is that correct?

A. Mr. Doar, would you point out where we are in the record?

Q. Just what you just read.

Judge TJOFLAT. You are talking about the parenthetical thing.

By Mr. Doar:

Q. The parenthetical, 01, 02, 03, 04.

A. Exactly.

Q. Those are various transactions or parts of the——

A. Lines in the computer. They have no significance to the record.

Judge TJOFLAT. What does H.K. slash N.N. mean?

The WITNESS. Hold confirmed, need deed.

Judge TJOFLAT. OK.

By Mr. Doar:

Q. Could you continue on?

A. OK. We are on——

Q. Let me just stop there. This tells you that Betty Williams at 3:19 on the 20th of April called Eastern reservations and canceled a flight from Atlanta to Newark and instead took a reservation from Miami to Newark aboard Delta and then took a Republic flight five days later from M.C.O.

What's M.C.O.?

A. Orlando.

Q. To Miami?

A. That's the way the booking was for that day. OK. That too will change.

Q. OK. Now, could you read on then, the next?

A. OK. We are at Miami. Agent sale, L-6. The transaction was at 1641Z on April 29th. We are canceling the space on Delta 446 from New Orleans to Newark for May 5th, and it gives the departure and arrival time.

Then we are canceling the space on Eastern 524 from Miami to New Orleans for May 1st. We are canceling the fare. That X.F. is changing the fare. Then there's Miami and there's a home, business number, area code 305-350-4189 business.

We are going to assign this space on Eastern's flight 4, Miami to Newark, on May 5th, departure and arrival time, received Betty.

Q. Let me just stop you again. Flight 4 from Miami to Newark leaves at 6:55 in the evening and arrives at Miami at 9:42?

A. Arrives at Newark.

Q. Arrives at Newark, excuse me, at 9:42?

A. Yes.

Q. All right.

Judge POINTER. The times for the flights are always in local time, not in Zulu or some other time?

The WITNESS. Right. It's local military time.

By Mr. Doar:

Q. Could you then read on?

A. Miami General sale, agent P-8, at 1824 Zulu on May 4th.

Canceled space on Republic's flight 220, Orlando to Miami, for May 10th.

Canceled space on Eastern's flight 701, Newark to Orlando, for May 7th.

Canceled an Avis rent-a-car for May 7th for Orlando. For May 10th. Then the car arrangements were for Eastern's flight 701.

Q. Does that tell you that the passenger earlier had made a reservation to reserve a car when he arrived at Orlando and to keep the car for the 3-day period that he was to remain in Orlando before taking the final segment of his trip back to Miami?

A. Yes.

Judge Tjoflat. What are the Avis symbols there, Mr. Doar?

The Witness. Z.I.

Judge Tjoflat. Z.I.C.R.R.?

The Witness. Yes.

Judge Tjoflat. C.R.R. Is a car?

The Witness. Yes.

Judge Tjoflat. And Z.I. is Avis?

The Witness. Yes.

By Mr. Doar.

Q. And the first symbols in the next line r slash line A.R.R., is that reserved——

A. Arrived——

Q. Reserved for arrival?

A. Yes. Arrive Eastern 701.

Q. OK.

A. May 7th, from Newark.

Q. What does the symbol within the brackets, the four, what's the assigned space then?

A. Assigned space on Eastern's flight 3 from Newark to Miami for May 6th, departure and arrival time, received Ms. Wilkinson.

Q. So that at this point, on the 4th of May, the passenger was going to depart from Miami on May 4th—excuse me. On May 5th on Eastern flight 4 direct to Newark and return the next evening on Eastern's flight 3 leaving Newark at 6:30 in the evening?

A. Yes.

Q. All right. That reservation came from a Ms. Wilkinson?

A. Yes.

Q. OK. Then would you read on?

A. Then there's the city ticket office where this reservation was handled and the agent's sign, and the person who handled it is agent 5–K.

Judge Tjoflat. What is X.C.P.?

The Witness. It's one of the city ticket offices.

Judge Tjoflat. Which city?

The Witness. It's in Miami. It's at the airport.

Judge Tjoflat. It is at the airport?

The Witness. Yes, sir.

By Mr. Doar.

Q. What does it say after the 2214?

A. On May 5th, X.I. is canceled, ticketing, T.L. 30.

When a passenger makes a reservation, he has a 30-minute time limit within to pick up the ticket or his reservations is canceled. Once that ticket is issued, you have to cancel the T.L. 30 because then there's no longer a deadline, and because this ticket was issued at the airport, we had to cancel the ticketing on the T.L. 30.

Q. Does that indicate to you that the passenger picked up the ticket at 6:14 p.m. on May 5th at the airport for flight 4 and returning on flight 3?

A. Yes.

Q. OK.

Judge Tjoflat. That is on the line that reads X.C.P.?

The Witness. Yes. At 2214 Zulu the ticket was issued.

Judge Tjoflat. And what tells you the ticket was issued, what symbol?

The Witness. The X.T., T.L. 30.

By Mr. Doar.

Q. When you see the symbol 5–K.F. After the received, what does that mean?

A. It means that the reservation, the counter agent there at the airport issued the ticket.

Q. OK.

Judge Tjoflat. What does 5–K mean?

The Witness. That's her agent's sign.

Judge Tjoflat. That is the ticket counter agent?

The Witness. Yes.

By Mr. Doar.

Q. Now, would you read the next line?

A. OK. New York sale, New York City, general sales, W–1 at 1320 Zulu on May 6th.

Cancel the space on flight 4, Miami-Newark, May 5th, departure and arrival time.

Cancel the space on flight 3, Newark to Miami, for May 6th, departure and arrival time, and assign space on flight 21, Laguardia Miami, for May 6th, and it was received by the passenger.

Q. What is the significance of the cancellation of flight 4 on the day following the time that the flight 4 traveled from Miami to Newark?

A. Rather than the agent going in, canceling a segment, she canceled the entire thing, but it had no significance because the trip had already taken place.

Mr. Doar. Your honor, before moving on to another exhibit, it occurred to me that maybe one or more members of the committee might want to ask about this particular reservation history rather than have to go back.

Judge Godbold. Any questions about this segment?

All right, sir.

Judge Pointer. Well, I am still confused about one aspect, and that is in the second sort of entry where we have an indication of a prior flight—let me see if I can find it. Eastern, where there's a cancellation of Eastern flight 450, that is line five in the typewritten material we are looking at. I am not clear about where that flight ever came from, because it wasn't on the initial reservation information, if I understand your testimony.

The Witness. No, it's not a part of the April 20th booking, not the creating of it. The cancellation of it.

When it was booked, I can't tell you, because the record doesn't say.

Judge Pointer. Presumably there would have been an earlier booking information for Hastings for that flight, but it just is not on this particular record?

The Witness. Yes.

Judge Pointer. And this particular record reflects the cancellation of that flight?

The Witness. Yes.

Judge Tjoflat. That would have been on an earlier dated flight reservation history for Eastern 450?

The Witness. Yes. The reservation could have been made the day before, but it's not——

Judge Tjoflat. Or a week before?

The Witness. Yes.

Judge Tjoflat. How far before could it have been made?

The Witness. Depending on your fare base and your flight structure, depends on how far in advance you can make—and since I don't know all of the rules, I can't say.

Judge Tjoflat. But sometime prior to the—could it have happened on the 20th?

The Witness. It could have, but I don't think it did, because had it happened on the 20th, it would have been a part of this record.

Judge Pointer. It might have been made through another airline, I take it, in which they were assigning space on an Eastern flight just as you can assign space on Delta flights.

The Witness. I don't think so, sir, because you can't go into another carrier's system and cancel a flight. They have to do it.

Judge Pointer. I am talking about the original obtaining of the ticket, if someone had gone to Delta, for example, and one part of the flight was going to be an Eastern flight, the Delta people could have assigned space, could they not, on the Eastern flight?

The Witness. Yes, and then we could have canceled that.

Judge Pointer. In which case later they might come back to you and cancel the space, so it could have come from another airline in terms of making the reservation, couldn't it?

The Witness. It's possible, but I don't know how 450 was created, so I'm not sure.

By Mr. Doar.

Q. Now, I would like to hand the members of the committee and the witness——

Judge Godbold. Mr. Doar, we are going to want to break. How long do you think examining this next set will require?

Mr. Doar. Well, it probably would take 15 minutes.

Judge Godbold. Do you want to proceed with this or would you gentlemen like to break for lunch?

Judge Pointer. And we will have some additional testimony from this witness after that on some other segments.

Mr. Doar. That's correct.

Judge Godbold. Let's take one more.

By Mr. Doar.

Q. I would like to place before you an enlarged exhibit 51.

Mr. **Doar**. Your honor, I think we can go faster through this.

Judge **Godbold**. Well, I am not prodding you——

Mr. **Doar**. I know, but it looks like it's long, but I think you will find that it——

Judge **Godbold**. All right, sir. You may proceed.

By Mr. Doar.

Q. Does this relate to another reservation history for a passenger A. Hastings?

A. Yes, sir.

Q. And could you read the information that's contained on that reservation?

A. Eastern flight 176Y, Miami-Washington, September 11th, has departure and arrival times, Miami General Sales. The agent is L.A. The transaction was booked at 19:29 Zulu on August 25th. Miami number, area code 305-350-4289, business, U.S. District Court. Fort Lauderdale, area code 305-731-8176 is home. Received Betty. Ticketed, September 3rd, general facts.

Q. What's general facts?

A. General facts is your reservation involved with another carrier, the fare quote. The next symbols that you see are——

Q. The S.S.R.O.T.H.S.E.?

A. Yes. It's a record locator for Allegheny so as to keep any other air carrier from going into your system, stealing your passengers, we just get a record locator so if there are any changes, we call the other carrier back and give them this information, and they will know where to find the reservation of the passenger.

Q. Okay.

A. Remarks is for a hundred dollars, Y28, C.C.Y. 28 L.A. The quote was given by the same agent, L.A., 453Y, 38 C.Y.B.S., Judge Alcee Hastings, U.S. District Court, 300 Northeast First Avenue, Room 327, Miami, Florida 33101.

The next numbers are those of the credit card, and it expires 9 of '82.

Judge **Tjoflat**. What kind of credit card?

The **Witness**. Four is a VISA, I believe.

Each credit card company number starts off differently, and I believe four is either VISA or American Express. I'm not sure.

Alcee Hastings. The credit card is listed in Alcee Hastings' name. U.T.R., I don't know what that means. September 5th-6th, Miami, P three hours.

Judge **Tjoflat**. You said September 5-6?

The **Witness**. I'm sorry. September 6th.

Are we ready?

By Mr. Doar:

Q. Do you know what that P three means?

A. No, I do not.

Q. Could you read on?

A. Okay. Miami, agent sale S.S., 19:11 Zulu, August 28th. Going to cancel space on Eastern 190Y, Miami-Washington, for September 11th. We are ging to assign space to Eastern 198, Miami-Washington, September 10th, arrival and departure times, received passenger.

Q. Okay.

A. Then Tampa, agent sale, E.C., at 20:34 Zulu on August 31st. Cancel space on Eastern 198Y, Miami-Washington, for September 10th. Cancel space on Eastern Flight 198, Miami-Washington, September 10th, departure and arrival time.

Judge **Tjoflat**. What does W.K. slash H mean?

The **Witness**. Will call.

Then we are cancelling space on Eastern's flight 197, Washington-Miami, for September 14th, departure and arrival time.

We are assigning space to Eastern's flight 176, Miami-Washington, September 10th, departure and arrival time.

S.C. is the same agent in Tampa who's handling the transaction. Eastern flight 197, Miami-Washington, September 14th, departure and arrival time, received secretary.

By Mr. Doar.

Q. Could I just stop you there? Does that reservation tell you that on the 31st of August, the passenger was going to go from Miami to Washington on September 10th on Eastern flight 176Y?

A. What line are you on, Mr. Doar?

Q. I'm on the line, the reservation made on August 31st at 20:34 Zulu time on a reading of the fourth entry there where it says assigning space at Eastern 176, Miami-Washington, September 10th.

A. Okay, now, what was your question?

Q. I was asking you if this indicates that the passenger at that time was going to depart on the 10th of September on Eastern 176.

A. Yes.

Q. Okay. Where in fact he didn't actually depart until the 11th on the same flight?

A. Right.

Q. Okay. Well, then, go on, please.

A. Okay. Move across to 197, Washington-Miami, September 14th, departure and arrival time, received secretary. Miami agent sale B.S., 17:52 Zulu, September 1st.

We canceled space on Allegheny's flight 725Y. M.D.T., I don't know what city code that is to Washington.

Judge TJOFLAT. Harrisburg.

The WITNESS. Okay. Thank you.

September 14th, departure and arrival time.

We cancelled space on flight 197, Washington-Miami, September 14th, departure and arrival time.

We assigned space on Allegheny's 169, Harrisburg to Pittsburgh, September 14th, departure and arrival time.

We assigned space on Eastern's flight 739, Pittsburgh-Fort Lauderdale, September 14th, received by Betty.

By Mr. Doar.

Could you continue?

A. Miami general sales, A-1, 19:00 Zulu, September 3rd.

We changed the fare, Miami, 305-350-4289, business. We canceled the ticketing, T.L. 600, September 9th, received Betty Williams, secretary. Chicago agent sale, I.N., at 21:18 Zulu on September 3rd.

Canceled the ticketing. T.H.M., I don't know what that is. September 3rd, received Chicago, R.E.

Then Pittsburgh, R.M.A.L. at 3:40 Zulu on September 4th.

Canceled the space on Allegheny's 169 from Harrisburg to Pittsburgh for September 14th.

Assigned the space on Allegheny's 473, Harisburg to Pittsburgh for September 14th. K.K. is confirmed. Received, none, Miami general sales, G.M., at 121:45 Zulu time on September 10th.

Canceled the space on Eastern's 176, Miami-Washington for September 10th, departure and arrival time.

Q. So could I just stop you there? Does this indicate that then at 7:45 in the morning on September 10th there was a reservation record made with respect to this passenger? That's 11:45 Z, September 10th?

A. Yes.

Q. Could you read that change, please?

A. At the cancel the space on flight 176, Eastern's flight 176, for Miami to Washington for September 10th.

Q. And then what happened next?

Judge TJOFLAT. Did the passenger do that or somebody else?

The WITNESS. I have to get to the end of the record and see who—no. It reads received, Betty, and it has slash secretary.

By Mr. Doar.

Q. Could you continue on with that reservation history after they canceled the space on 176?

A. OK. Miami-Washington for September 10th, departure and arrival time, on Allegheny's flight from Harrisburg to Pittsburgh.

There was a cancellation. We canceled space on Allegheny's Flight 169 from Harrisburg to Pittsburgh for September 14th, departure and arrival time.

Assigned Space on Eastern's flight 200, Miami-Washington, September 11th, departure and arrival time.

We canceled space on Allegheny's 473, Harrisburg-Pittsburgh for September 14th, departure and arrival time, received passenger. Then Miami general sales, A-1, at 14:59 Zulu on September 11th.

Canceled space on Eastern's flight 200, Miami-Washington for September 11th and assigned space on Eastern's flight 176, Miami-Washington for September 11th, received Betty, secretary.

Q. Let me stop you for a minute. When Judge Tjoflat asked who made the changed reservation that was entered at 11:45 Z, I think you said that was the secretary, Betty, but wasn't that in fact done by the passenger?

A. Yes, and I apologize for that. I didn't see the received. Each received is the end of a transaction.

Judge TJOFLAT. And it has P at the end of the received.

The WITNESS. Right. It's passenger.

Judge TJOFLAT. The passenger did that at 7:45 in the morning on the 10th of September?

The WITNESS. Yes.

By Mr. Doar.

Q. And then Betty, his secretary, did something else at 10:59 in the morning?

Judge TJOFLAT. On the 11th. The next day.

Mr. DOAR. On the next day, yes.

The WITNESS. Uh-huh.

By Mr. Doar.

Q. OK.

A. Chicago general sales, 9-W, at 20:41 Zulu on September 13th.

Canceled the space on Eastern's 739, Pittsburgh to Fort Lauderdale for September 14th.

Canceled the space on Allegeny's 473, Harrisburg to Pittsburgh for September 14th.

Assigned space on Allegheny's 730, Harrisburg to Washington for September 14th.

Assigned space on Eastern's 177, Washington-Miami, September 14th, received passenger.

Judge POINTER. You indicated that was Chicago That is through this computer system that you have got?

The WITNESS. Yes, sir.

Judge POINTER. So it actually wasn't being done by the passenger in Chicago, but it was being done by the passenger somewhere else and then logged into the computer system in Chicago; is that right?

The WITNESS. Yes. That was the next available agent to answer the phone.

Pittsburgh, R.M., agent A.L., at 14:40 Zulu on September 14th.

Assigned space to Eastern's 965, Washington-Miami, for September 14th, Departure and arrival—S.S. is sell for one. S.C. is a wait listing code for Flight 177 for Washington-Miami for December—for September 14th. I'm sorry. Departure and arrival time, received none.

By Mr. Doar.

Q. Now, looking back up at the——

Judge TJOFLAT. What does that mean, Mr. Doar?

Mr. DOAR. Received none.

Judge TJOFLAT. Well, that whole entry, what does that translate in layman's terms?

By Mr. Doar.

Q. Could you do that for us?

A. Apparently, they wanted to wait list for Flight 177, and received none is we cannot do anything until——

Judge TJOFLAT. What does wait list mean?

The WITNESS. Wait list is your preferred flight is not available.

Judge TJOFLAT. In other words—what does R.C.B. none mean?

The WITNESSS. Received none means that we cannot confirm, hold a confirmed seat for you because we are wait listing it.

Judge TJOFLAT. Can you tell where the request came from, whether it came from the passenger?

The WITNESS. No, I can't.

Judge TJOFLAT. Somebody called Eastern——

The WITNESS. Yes.

Judge TJOFLAT. At 14:40 Zulu on September 14th?

The WITNESS. Yes.

Judge TJOFLAT. And was assigned space on Eastern 965 leaving D.C. and going to Miami on the 14th at 1:50 in the afternoon.

The WITNESS. Yes.

Judge TJOFLAT. Is that right?

The WITNESS. Yes.

Judge TJOFLAT. And the passenger wanted to leave at 2:00 o'clock on Eastern 177Y?

The WITNESS. Yes.

Judge **Tjoflat**. Instead of at 1:50?

The **Witness**. Uh-huh.

Judge **Tjoflat**. Is that right?

The **Witness**. Yes, but he was later cleared because the history over in the left-hand corner column where the name Hastings appears, all of this flight information is confirmed so he was cleared for flight 177 because it's a part of the final record.

Judge **Tjoflat**. Is the asterisk that appears there at the top, the fourth line down opposite Hastings A., related to the asterisk in the reservation areas there, on the last line of the reservation? You see the S.C. asterisk E.A. 177Y?

The **Witness**. Yes. But that's for passenger G. Lynn. That's not——

Judge **O'Kelley**. The line above there.

Mr. **Doar**. Let me show you.

Judge **O'Kelley**. It shows S.C. asterisk B.A.O.

Mr. **Doar**. Right there. Do you see it?

The **Witness**. Uh-huh.

By Mr. Doar.

Q. Does that asterisk relate to that asterisk?

A. Yes, That relates to this.

Mr. **Doar**. I'm pointing, your honor, to the asterisk on the last line of the Hastings reservation and on the last line of the Hastings final reservation record for the confirmed reservations that are up, just opposite the Hastings name on the left-hand side of the document.

By Mr. Doar.

Q. Just to be clear, I'm now pointing here—there's four lines each beginning with after Judge Hastings with a particular flight. The first is Eastern 176. Then Allegheny 716. Then Allegheny 730. Then Eastern 177Y. Does that—up here.

A. Yes.

Q. Does that indicate——

A. I have something to point out——

Judge **Tjoflat**. Mr. Doar, I think—go ahead. I think there is an error here.

By Mr. Doar.

Q. Go ahead.

A. Can I point out something to you?

Q. Right.

A. At the bottom when we are assigning space to Eastern's Flight 177, if you move along that line you will see an S.S. slash N.N. It means sell sell, need need. As opposed to all the others are H.K.'s which is a hold confirm.

That reservations for flight 177, if you move over you will see it was received by the passenger. Then when the space became available on the last line where the asterisk is, he was cleared from wait listing and put on a positive space, and then you will see the H.K., hold confirmed.

Judge **Tjoflat**. That is why you have none?

The **Witness**. Yes.

Judge **Tjoflat**. Because the airline did it, itself?

The **Witness**. Right, and the passenger had already booked it.

Judge **Tjoflat**. Is that what none means, the airline is making an adjustment in a reservation?

The **Witness**. Right, because he was wait listed.

By Mr. Doar.

Q. Just to finish up the question I had, the four lines opposite Judge Hastings' name immediately opposite are the final confirmed reservations for the passenger?

A. Yes, sir.

Q. Referring to the first leg of the flight which is Flight Eastern 176 leaving Miami at 15:48 and arriving in Washington at 18:00; is that correct?

A. Yes.

Q. Now, is it correct to say that that reservation was made at 1459 Zulu on September 11th by Secretary Betty?

Judge **Tjoflat**. The seventh line from the bottom.

Mr. **Doar**. The seventh line from the bottom.

Judge **Tjoflat**. Betty canceled E.A. 200 that was leaving Miami at 6——

The **Witness**. Yes.

Judge **Tjoflat**. And put the passenger on an earlier flight.

The **Witness**. Yes.

Judge **Tjoflat**. On 176 leaving at 3:48.

The **WITNESS**. Yes.

By Mr. Doar.

Q. Is that correct?

A. Yes.

Mr. **DOAR**. That's all the questions I had for that document, your honor.

Judge **TJOFLAT**. Why would there be a Tampa entry on the second one coming down there?

The **WITNESS**. Because of the next available open line. Our phones are answered all over the system.

Judge **GODBOLD**. Let's be in recess until ten after two which is one hour.

[Thereupon, the proceedings were recessed at 1:10 o'clock p.m., and then continued as follows.]

Judge **GODBOLD**. All right, Mr. Doar, you may proceed.

By Mr. Doar.

Q. I want to show you an enlarged exhibit from IC–43. I would like to ask you if IC–43 is another one of the records from Eastern Airlines that you located in your files.

A. Yes.

Mr. **DOAR**. I think IC–43 has been tendered to the committee, your honor, but if it's not, I will do it now.

Judge **GODBOLD**. You had tendered 2032 through 45.

Mr. **DOAR**. That's right, but I say I think it's been tendered at an earlier time, and if it hasn't——

Judge **GODBOLD**. If it hasn't, it is received.

The **CLERK**. IC–43?

Judge **GODBOLD**. You show 43 as admitted?

The **CLERK**. Yes, sir.

Judge **GODBOLD**. All right.

By Mr. Doar.

Q. Do you have IC–43 before you, Ms. Boone?

A. Yes.

Q. And for whom is this reservation record?

A. William Borders.

Q. What does the reservation record reflect with respect to Mr. Borders' reservation on September 12th?

A. It starts off with Arunk, and "Arunk" means that the destination of another portion of the trip is not going to be the origin portion of the second leg of the trip.

Judge **TJOFLAT**. Say that again, please, ma'am, that the what?

The **WITNESS**. The destination of your—the first leg of your trip is not going to be the same as the origin of the second leg of your trip.

You have got off in Atlanta, and you are going to continue out of Savannah, so Arunk is land transportation.

By Mr. Doar.

Q. Could you read that reservation history to the committee?

A. Yes, Sir. Miami, agent sale 4–J, 1706 Zulu on September 12th, Palm Beach number area code 305, phone none, received passenger, ticketed September 12th, passenger remarks, the fare is $169, F–28, 4–J. It's a fare quote. Atlanta, general sales, D.U.——

Q. Could I just stop you there?

A. Yes, sir.

Q. That then reflects that at 1:06 in the afternoon on September 12th the passenger phoned in and made this reservation or changed this reservation?

A. Yes.

Q. And what does it mean when you say since he phoned in he was ticketed?

A. There is no phone. There's no phone contact.

Q. I see.

Judge **TJOFLAT**. That is what 305 none means?

The **WITNESS**. right.

Judge **TJOFLAT**. Why is 305 there?

The **WITNESS**. Because it's within the area code. Palm Beach is within the 305 area code.

Judge **TJOFLAT**. Does it mean that he made the call from Palm Beach?

The **WITNESS**. Yes.

By Mr. Doar.

Q. What does the ticketed mean?

A. Ticketing is regarding the fare. OK, the ticketing is—because he couldn't have been ticketed over the phone.

Q. So he's just getting information about the cost?

A. Right.

Q. And then if you would continue.

A. Then Atlanta general sales, D.U. at 1930 Zulu on September 12th.

Canceled space on Eastern 532F, Palm Beach-Atlanta for September 12th, origin and destination time.

We assigned space to Eastern 266F, Melbourne-Atlanta for September 12th, departure and arrival time, received passenger.

Then out of—I have to look on my city code to see where X.S.O. is, but it's a city ticket office. Agent sale, B.B., at 2039 Zulu on September 12th.

Canceled space on flight 266 from Melbourne to Miami for September 12th.

Judge POINTER. Melbourne to Atlanta; is that right?

The WITNESS. Melbourne to Atlanta. I'm sorry. On September 12th.

We canceled space on Eastern 904, Atlanta-Washington for September 12th and assigned space to Eastern's 858, Orlando-Washington, September 12th, received Melbourne F690. I don't know what that is.

Judge TJOFLAT. Does that mean that was done at the Melbourne ticket office in the airport at Melbourne?

The WITNESS. No. It might mean that it's Melbourne reservations, but the city code is never the airport.

X.S.O.A.S.B.B. At 2040 Zulu on September 12th.

Canceled space on Eastern's 858, Orlando to Washington for September 12th.

Assigned space to Eastern's 858, Orlando-Washington for September 12th.

We canceled on 858Y and assigned on 858 first class.

By Mr. Doar.

Q. Could I stop you there?

A. Yes, sir.

Q. Does this indicate that after he made his reservation or if when he was making his reservation at 4:39 he got a tourist ticket and the next minute he changed it or upgraded it to first class?

A. Yes.

Q. All right.

A. Again, it's the Melbourne F690.

X.S.O.A.S.B.B., the same agent is doing all of this because the agent's sign in the field remains the same. At 2041 Zulu, September 12th.

We canceled the ticketing, T.L. 30, received B.B., so the agent at the airport issued a ticket on September 12th.

X.S.O.A.S.H.Q. at 2202 Zulu on September 12th.

Canceled a space on Eastern's 858 first class, Orlando to Washington, for September 12th and assigned a space to Eastern's Flight 664 first class, Orlando-Baltimore for September 12th, received passenger.

Q. Does the 664 below the word arunk indicate that was the reservation——

A. That was the final transaction.

Q. Final transaction.

Could you go back then to the phone reservation that was made at 1:06 from West Palm Beach and indicate again which flight the reservation was for at that time?

A. Orlando to Baltimore, September 12th. The record continues on the second line.

Q. Okay. Thank you.

Could you tell me on the line just above that to the very right after it says ticketing, it looks like it's 125E. Do you see that on the far right?

Let me show you. Right underneath your finger.

Do you know what that is?

A. No, I don't.

Mr. DOAR. That's all the questions I have with respect to this document, your honor.

Judge GODBOLD. Judge Tjoflat?

Judge TJOFLAT. Ms. Boone, where was the passenger when he made the 17:06 Zulu reservation or cancellation?

Judge GODBOLD. What line are you on?

The WITNESS. I see a 17:05 on the first line.

Judge Tjoflat. I am on the line that begins with arunk, and I am going across the line.

The Witness. Palm Beach.

Judge Tjoflat. It says M.I.A.A.S.——

The Witness. 4-J.

Judge Tjoflat. That's right.

The Witness. Palm Beach.

Judge Tjoflat. The passenger is at Palm Beach, and can you tell us where the passenger is at Palm Beach?

The Witness. No, sir.

Judge Tjoflat. Why can't you do that?

The Witness. Because the reservation is only reflecting that the call came from Palm Beach and an area Code 305 which is still the southeast portion of Florida.

Judge Tjoflat. When it says fone, F-O-N-E, parenthesis, and it says P.B.I.——

The Witness. Yes.

Judge Tjoflat. That is what that means. The P.B.I. 305 is it from Palm Beach?

The Witness. Yes, sir.

Judge Tjoflat. Could it have come from the ticket counter at Palm Beach?

The Witness. No, sir.

Judge Tjoflat. Could it have come from the airport telephone at Palm Beach?

The Witness. That, I'm not sure of.

Judge Tjoflat. Well, it came by telephone.

The Witness. Yes, definitely.

Judge Tjoflat. As distinguished from walking up to the ticket counter?

The Witness. Yes.

Judge Tjoflat. All right. Now, the next reservation is at 19:30 Zulu which is 3:30 in the afternoon, and where is the passenger at that time?

The Witness. Let me find where you are on the record.

Judge Tjoflat. I am starting with Atlanta, G.S.D.U., 19:30 Zulu, 12 September. There is a cancellation of Eastern 532 from Palm Beach to Atlanta.

The Witness. Uh-Huh.

Judge Tjoflat. And from Atlanta to—oh, Palm Beach to Atlanta and an assignment of space on Eastern 266.

The Witness. It's not so indicated in the record, but there's just a matter of minutes between the original call and the second one, 17:06 and 17:55 Zulu.

Judge Tjoflat. Where is 17:55 Zulu?

The Witness. I'm sorry. It's 19:30 Zulu.

Judge Tjoflat. The 19:30 Zulu is almost—that is 2 hours and 24 minutes difference.

The Witness. I can only tell you who intercepted the call.

Judge Tjoflat. Who intercepted it?

The Witness. Atlanta. A.T.L. is Atlanta, general sale.

Judge Tjoflat. But it was done by the passenger?

The Witness. Yes.

Judge Tjoflat. Or somebody identifying himself as the passenger?

The Witness. As the passenger.

Judge Tjoflat. All right. Then you have a transaction that occurred, the next one at 20:39 Zulu which was 4:39 in the afternoon. At that time, was not the passenger booked on a flight on Eastern 266 from Melbourne to Baltimore?

The Witness. He was assigned space on 266, Melbourne-Atlanta.

Judge Tjoflat. I'm sorry. M.L.B. is Melbourne-Atlanta.

The Witness. Yes.

Judge Tjoflat. And that flight was to leave at 16:35?

The Witness. Yes.

Judge Tjoflat. And this transaction is four minutes later?

The Witness. Yes.

Judge Tjoflat. Which suggests that the passenger missed that flight from Melbourne to Atlanta and made another reservation out of Orlando. Is that a fair assessment?

The Witness. Would you allow me time to start from the beginning?

Judge Tjoflat. Sure.

The Witness. Okay, because I want to—now, would you ask your question again?

Judge Tjoflat. Okay. The passenger had a ticket or was booked on Eastern 266 from Melbourne to Atlanta that was to leave Melbourne at 16:35 in the afternoon?

The Witness. Yes, sir.

Judge Tjoflat. Which was 4:35 in the afternoon? Right?

The Witness. Correct.

Judge **Tjoflat**. Now, if you look at the line above it, at 19:30 which is—excuse me. At 20:39. You look right below it. All right?

The **Witness**. Uh-huh.

Judge **Tjoflat**. Which is four minutes after the Melbourne flight was to have left for Atlanta. Okay? Do you follow?

The **Witness**. Yes.

Judge **Tjoflat**. There's a cancellation of that flight, Eastern 266?

The **Witness**. Yes.

Judge **Tjoflat**. And a booking on Eastern—what is that, 904? I can't read it.

The **Witness**. Yes, 904.

Judge **Tjoflat**. Well, that was also canceled, wasn't it?

The **Witness**. Yes.

Judge **Tjoflat**. And there was a booking on a flight out of Orlando?

The **Witness**. On flight 858.

Judge **Tjoflat**. Yes. Now, was that done at the airport at Melbourne?

The **Witness**. Yes, because the same person handled it, the same agent.

Judge **Tjoflat**. And the agent is A.S.B.B.?

The **Witness**. B.B., yes.

Judge **Tjoflat**. So can we infer from that that the passenger was at the Melbourne Airport and canceled the flight four minutes earlier that had left, if it left on time, and booked a flight out of Orlando?

The **Witness**. I think that's a fair assessment.

Judge **Tjoflat**. All right.

Judge **Godbold**. Any other questions?

Mr. **Doar**. Could I just——

By Mr. Doar.

Q. Does the reservation record indicate that at 1:06 in the afternoon the passenger made the reservation from Melbourne to Baltimore on flight 125 and then he changed that and then he finally ended up getting that reservation again and taking that flight?

Judge **Tjoflat**. Wait a minute. Taking from Melbourne to Baltimore?

Mr. **Doar**. Excuse me. From Orlando to Baltimore.

By Mr. Doar.

Q. Does the reservation record indicate that 1:06 in the afternoon the passenger made a reservation from Orlando to Baltimore and then at 22:02 Zulu or at 6:02 he then made that reservation again and got on that flight?

Judge **Tjoflat**. It's M.L. to Baltimore, Mr. Doar, isn't it? M.L.B. from Melbourne to Atlanta.

Mr. **Doar**. I'm sorry, Your Honor.

Judge **Tjoflat**. At 17:06 Zulu.

Mr. **Doar**. Right.

Judge **Tjoflat**. There is a reservation on a flight from Orlando to B.W.I.

Mr. **Doar**. Right.

Judge **Tjoflat**. At 18:45 which is 6:45 p.m. arriving at 2:35.

Mr. **Doar**. Right.

Judge **Tjoflat**. All right.

Mr. **Doar**. That flight as you look at the bottom of the reservation, there's a flight, Eastern's—I can't make out the number.

The **Witness**. It's 564. I think it is.

Mr. **Doar**. From Orlando to Baltimore leaving at 18:45 and getting in at 20:35.

The **Witness**. Right.

By Mr. Doar.

Q. Now, is that the same flight that was reserved at 1:06?

A. No. I don't think so, Mr. Doar. The 1:06 starts this transaction. The final trip that the passenger takes is always at the bottom, because each time a change is made you have to add to the record, and the final decision is at the bottom, and so that 664 is what he actually traveled on from Orlando to Baltimore on September 12th.

Q. Okay. Could you tell me again what the passenger did at 1:06, the first entry?

A. On September 12th a call was made, Palm Beach number, received by passenger, fare quote 169 and 4-J, the agent booked this reservation.

Now, let's see whether there was a cancellation down below.

Judge **Tjoflat**. Well——

By Mr. Doar.

Q. What reservation did he book at 1:06 when he made that phone call?

Judge **Tjoflat**. Where does it start, Mr. Doar? After you have received from the passenger——

Mr. **Doar**. Then it says ticketing, but then if you run over below the word arunk to the——

Judge **Tjoflat**. It says from M.C.O.B.W.I., but it doesn't have a flight.

Mr. **Doar**. Just before to the left of that.

Judge **Tjoflat**. Oh, all right. It is Eastern 664.

Mr. **Doar**. Well, you can't——

Judge **Tjoflat**. It's under arunk.

Mr. **Doar**. It's Eastern 664 from Orlando to Baltimore leaving at 6:45 and getting in at 8:35. That's what the reservation seems to say. That's the same reservation that was made at 6:02 from the Orlando Airport.

Judge **Tjoflat**. Is that right, Ms. Boone?

The **Witness**. I'm really trying to——

Judge **Pointer**. I thought we concluded the very first line was simply a request for information or for fare information and that the airline that you are referring to, Mr. Doar, that's under arunk simply is an airline of the flight that was actually taken as obtained from the last entry on this report.

Mr. **Doar**. Well, that's what I thought, but I just wanted to be clear about it.

Judge **Tjoflat**. There's no A.S. that appears, Mr. Doar, on that first line which is the symbol which shows making a reservation.

By Mr. Doar.

Q. So that what was the passenger doing when he called in at 1:06?

A. From the way the record is reading, Mr. Doar, it's simply the fare quote for the flight, because it only has the amount and the fare quote here, and the same agent that answered the phone who is 4-J is the one that gave him the quote, and the next information we have is—it starts off in Atlanta.

Judge **Tjoflat**. Did he get a fare quote on Eastern 664 from Orlando to Baltimore?

The **Witness**. Yes.

Judge **Tjoflat**. And the agent was A.J.?

The **Witness**. It was 4-J.

Judge **Tjoflat**. Where was 4-J located?

The **Witness**. In Miami.

And then when all the changes started is when Atlanta came into the picture.

By Mr. Doar.

Q. So the first change that was made in the reservation as far as the original reservation was made at 3:30, 19:30 Zulu?

A. Yes.

Mr. **Doar**. Thank you.

Judge **Godbold**. Any other Questions?

Judge **Tjoflat**. Yes, I have one.

Ms. Boone, if the the first transaction was the cancellation at 3:30 in the afternoon, 19:30 Zulu, of Eastern 532 from Palm Beach to Atlanta, I take it that this document doesn't show when that reservation was made.

The **Witness**. No, sir.

Judge **Tjoflat**. From Palm Beach to Atlanta, the one that was canceled.

The **Witness**. Right. It does not.

Judge **Tjoflat**. All right.

Judge **Godbold**. Anything further on this document?

All right, Mr. Doar.

By Mr. Doar.

Q. I would like to place before you two exhibits, exhibits IC-44 and IC-2355.

In this flight, these two documents, I would like to ask you just about flight information.

Referring first to IC-2355, could you tell me what flight information that relates to, what flight number?

A. Flight 177.

Q. And what day?

A. For May 5th.

Q. And where was the flight, what was its point of origination and point of termination?

A. Allentown to Washington to Miami to Freeport.

Q. Could you tell the committee what time that plane left the gate from Washington?

A. It was out from the gate at 1:45 p.m.

Q. And could you point out to the committee or describe where you are reading the 1:45?

A. The last entry of D.C.A. on this sheet which is about eight to ten characters down.

Q. Beginning with and after the D.C.A.?

A. Yes.

Q. And what is the next time, 17:45 Z?

A. It's 18:08 Z.

Q. Okay, 18:08 Z?

A. Yes.

Q. And now could you read that line?

A. Yes.

Mr. Doar. Do all the members of the committee have that 18:08 Z line?

Judge Tjoflat. It begins with 2 D.C.A.?

The Witness. Yes.

It was on the ground at 1:05 p.m. It was at the gate at 1:08 p.m. It was three minutes late. It was out at 1:45 p.m. It was ten minutes late. Off at 1:59.

Out is pushing off from the gate. Off is actually taking off the ground.

By Mr. Doar.

Q. Now, could you tell the committee what line tells you the time of arrival on the ground in Miami and the time in the gate?

A. It's the third from the bottom, the last Miami entry.

Q. Okay.

A. It was on the ground at 3:55 p.m.; at the gate at 3:58. It was six minutes late.

Q. Okay. Now, could you turn to exhibit 44, and what flight does that refer to?

A. Flight 664 for September 12th.

Q. And what was its point of origination?

A. Tampa to Orlando to Baltimore to Allentown.

Q. Now, what time did the flight leave Orlando, and what line are you referring to when you find that information?

A. Eleventh character down. It's the last Orlando on the M.C.O.

Q. And is 23:13 Z entered right after that last Orlando line?

A. Yes, sir.

Q. And what time did it go out and what time did it take off?

A. It was out at 7:00 o'clock p.m. It was off at 7:10.

Q. And could you tell the committee what time that flight arrived at the gate in Baltimore?

A. It was in at 8:58 p.m. It was 23 minutes late.

Q. And it was on the ground at 8:56?

Yes.

Q. Okay. Thank you.

Mr. Doar. I don't have any more questions about those exhibits, your honor.

Judge Godbold. Mr. Doar, 2355 you submitted today.

Mr. Evans, has IC-44 been accepted?

The Clerk. Yes, it has.

Judge Godbold. All right.

By Mr. Doar.

Q. Now, I would like to hand you exhibits 2354 and 2353.

Judge Godbold. Let's go back just a minute. Mr. Evans, is 2355 in?

The Clerk. Yes, sir.

Judge Godbold. How about the ones we are just now going to look at, 2354 and 2353?

The Clerk. They are.

Judge Godbold. All right.

By Mr. Doar.

Q. Could you take first 2354 and tell me for whom that's a reservation record, if that is a reservation record for Hastings, A.?

A. Yes.

Q. And for what flight was that reservation?

A. Eastern's flight 176, Washington—Miami-Washington, June 17th, and Eastern's flight 965, Washington-Miami, June 18.

Q. Now, could you read that reservation for us?

A. Yes. Eastern 176, Miami-Washington, 17 June, 15:49 departs, arrives at 18:01, Miami agent sale, I.G., booked it at 18:50 Zulu on June 15th. Miami phone is area code 305-350-4289, it's a business number, and Miami 305-731-8176, Home, Fort Lauderdale. His secretary booked it. Ticketed on June 16th, remarks, a fare quote was $298. G.A.F. is a guaranteed air fare. June 15th, Miami I.G., the same agent handled it.

Then at the airport, X.S.P.A.S.—I can't read that agent's sign. It's blurred. At 16:10 Zulu on June 16th.

We canceled the T.L. 30 because the ticket was issued by the same agent. That's an M.S., it appears.

Q. The T.L. 30, is that hold for 30 minutes before departure?

A. It is, but when you see the X.T. you are cancelling the hold, because the ticket is being issued.

Q. Yes.

Judge Tjoflat. What does that mean, that somebody was at the airport at 16:10 Zulu?

The Witness. Yes, sir.

Judge Tjoflat. That the passenger was probably at the airport and picked up the ticket?

The Witness. Yes.

Judge Tjoflat. At 16:10 Zulu?

The Witness. Yes, sir.

Judge Tjoflat. All right.

The Witness. That is that record.

By Mr. Doar.

Q. Could you then refer to 2353, and I would ask you if that document also contains a reservation history of Hastings.

A. Yes.

Q. And can you make out the initial behind Hastings there?

A. It's L, Ms. L.

Q. It's a Ms.?

A. (Nods head affirmatively).

Q. For what is this reservation? Where does this reservation take the passenger?

A. This reservation takes the passenger from Fort Lauderdale to Washington back to Fort Lauderdale.

Q. And could you read that reservation history?

A. Yes, sir. Eastern's flight 158, Fort Lauderdale-Washington, July 18th, departure and arrival time. An agency sold the ticket, general sales. The agent—the sign for the agency's agent is AA. The transaction happened at 19:40 Zulu.

Judge Tjoflat. Can you tell which agency sold it? Boulevard Travel? Is that what that means?

The Witness. Yes. On July 6th. Fort Lauderdale phone, area code 305-491-5000 is the number for Boulevard Travel. Center M.P., Boulevard Travel Center. Fort Lauderdale area code 305-561-3878, the home, received passenger slash Heidi. Heidi confirmed it with Eastern, and she is the representative of the travel agency. According to P slash Heidi, Heidi was to transfer this information to the passenger because the agency was booking it.

Ticketed July 16—these codes, I don't know that they are. Agency sale, general sales, A.A. at 21:00 Zulu on July 6th.

Canceled space on—Q.H. is Air Florida, I believe. Flight 131, Washington-Fort Lauderdale for July 21st, departure and arrival time.

Assigned space to Air Florida 131, Washington-Fort Lauderdale for July 22nd, departure and arrival time, received Heidi.

The same agency at 14:38 Zulu on July 7th canceled the ticketing, received A.A. who is still this representative from the agency.

The agency again at 14:43, July 7th, canceled ticketing for the July 7th flight.

Judge Tjoflat. For the July 7th flight?

The Witness. Yes, canceled ticket, slash July 7th.

The next line is the agency again at 14:02 Zulu on July 16.

Canceled space on Air Florida's flight 27, Fort Lauderdale-Washington for July 17th, departure and arrival time.

Assigned space to Eastern's flight 158Y, Fort Lauderdale-Washington, July 18th, departure and arrival time, received by Heidi.

The agency again on, at 14:06 Zulu on July 16th canceled the ticketing, received by Heidi, which is the agent's sign, A.A.

Mr. Doar. That's all the questions I have with respect to that.

Judge Godbold. Any questions on this one?

Mr. Doar. Now, I have, your honors, the other——

Judge Tjoflat. Well, excuse me.

Ms. Boone, on IC-2353——

The Witness. Yes, sir.

Judge Tjoflat [continuing]. Does that document tell you that there was a lot of reservation activity and then it was all canceled?

The Witness. No. The reservation tells me that there was some activity but there were two flights confirmed, one on Eastern and one on Air Florida.

Judge Tjoflat. There at the top of the document?

The Witness. Yes.

Judge Tjoflat. The passenger was going to come back to Fort Lauderdale on the 22nd of July.

The Witness. Yes.

Judge Tjoflat. Is that right?

The Witness. Yes, sir. On Air Florida.

Judge Tjoflat. On Air Florida, and was going to fly to Washington on the 18th of July on Eastern 158?

The Witness. Yes, sir.

Mr. Doar. I have three other reservation records.

I believe that the reservation records are fairly apparent now, your honor, with respect to reading them based upon Ms. Boone's assistance on the others, but I would be glad to have her read them all if you would care to have me to do so.

Judge Godbold. Well, I believe it would be helpful if the committee had a few minutes to look at these to be sure whether we have any questions.

Mr. Doar. All right. Let me then hand to the committee exhibits 2030, 2032 and 2356.

Judge Godbold. Mr. Evans, is 2020 in?

The Clerk. Yes, sir—or——

Judge Godbold. 2030.

The Clerk. One second.

Yes, it is.

Judge Godbold. How about 2032?

The Clerk. Yes, sir.

Judge Godbold. And 2356?

The Clerk. Yes, sir.

Judge Godbold. All right.

No questions about any of this material you have just handed us, Mr. Doar.

Mr. Doar. Your honors, I would like to hand you four more exhibits, exhibits 2351—there are more than four exhibits. It's 2033, 34 and 35—wait a minute. I have got a mistake there. It's 2036, 37 and 38 and 2045.

These exhibits, your honor, relate to reservation records of dredge for flights on May 28th, reservations for May 28th, May 29th, July 7th, July 9th and July 16th, July 18th.

Judge Godbold. Mr. Doar, would you approach the bench, please, sir?

[Thereupon, a discussion was had at the bench, out of the hearing of the court reporter.]

By Mr. Doar.

Q. Ms. Boone, Does Eastern have a glossary of all the symbols and codes that are used on reservation records?

A. Most of them, yes.

Q. And do you have that with you?

A. Yes.

Q. Could you provide that for the committee so that they could have that as an exhibit as well so if anyone wanted to look at it at a subsequent time they could check the symbols on the reservation records as against the glossary?

A. I can.

The only thing is some of the fields on the one that I have have been updated. The one that I have is updated. The ones that would pertain to 1981 when this record was created, I would have to get one and send it back to you.

Q. Could you do that?

A. Because there could be some differences.

Q. Could you send us back a complete glossary as it existed in 1981?

A. Yes.

Q. That would be find.

Judge Godbold. Let's proceed on this basis, that the witness has testified that she will make available to the committee the glossary that was in effect at the time the reports we have been considering were generated.

If she will simply mail that to Mr. Doar authenticated by her signature that it is the glossary in effect at the time in question, and we will then accept that as an exhibit as so authenticated.

Mr. Doar. All right.

Does the committee have any questions on those last four exhibits?

Judge Godbold. I think not.

Mr. Doar. I have one final exhibit which—this is exhibit 54 which has already been received by the committee.

Could I ask the witness one question?

Judge Godbold. Yes, sir.

By Mr. Doar.

Q. Will there be any information on the reservation record for which the glossary doesn't provide a key to the symbols?

A. Yes.

Q. And what is that information?

A. It will be the third entry in the reservation field identifying the employee.

Q. That is at the beginning of the reservation record where it starts with the——

A. City code.

Q. City code, and then——

A. General sales.

Q. And then the symbol for the employee?

Judge Tjoflat. But the glossary will say though that is an employee symbol?

The Witness. Yes.

Judge Tjoflat. We just don't want the name of the employee. The glossary, Mr. Doar, can simply say that whatever the letters are, that that means an employee who can be identified.

Judge Godbold. Well, the glossary will have to say what it says.

Mr. Doar. Well, I don't know that the glossary would have the symbols for every employee that was on these records. That's all.

Does the committee have any questions about 54, IC-54?

Judge Godbold. No.

All right, Sir.

Mr. Doar. That's all the questions I have, your honor, but I would like to clarify one matter with Ms. Boone while the next witness is going on in the event that I would want to ask any further questions.

Judge Godbold. Now, these exhibits that were tendered today which I believe were IC-2032 through 2045.

Mr. Doar. Right.

Judge Godbold. It was developed by questioning that these are copies of records of Eastern.

I think probably you need to ask a question or two to demonstrate that the records from which these were copied are records kept in the regular course of business and so forth.

By Mr. Doar.

Q. Ms. Boone, the record from which the exhibits were copied, are they maintained by eastern on a regular basis?

A. Yes, Sir.

Q. And is that done in the regular course of Eastern's business of flying airplanes for passengers?

A. Yes, Sir.

Q. Now——

Judge Godbold. Are the records made contemporaneously with the transaction?

The Witness. The records are stored in the computer for 48 hours after the close of a flight. After that, they are transferred to microfilm for permanent storage.

Judge Godbold. The original record that is kept for 48 hours is made when the event occurs, isn't it?

The Witness. Yes.

By Mr. Doar.

Q. Now, one further question. In connection with the subpoenaes that were served upon you, were there certain records that you could not locate?

A. Yes, Sir.

Q. And can you tell us why it was that you were not able to locate that record, those records?

A. They had been destroyed—the time period requested, the records for that time period had been destroyed.

Q. And with respect to the ticketing information with respect to certain of the reservation records that you were asked to produce in response to a subpoena that was served upon you in March of this year, what was the fact with respect to the ticketing information at that time?

A. The tickets—the film that the tickets were on had already been destroyed. We had not gotten around to destroying the passenger reservation records at the time of your request, subpoena.

Q. Were you able to locate for me certain reservation records at that time?

A. Yes.

Q. Now, in the subpoena, you were asked to search your records for a period of time for, say, two or three months to see if there was a reservation record of a particular passenger at any time during that period for any flight between two locations; is that correct?

A. Yes.

Q. What was your response with respect to that?

A. We limit our investigation to a five-day period and so the January through April as requested in the subpoena, we did not comply with that request.

Q. And so then when the subpoena was narrowed to a five day request, did you search to see if you could locate any records within the five day period which were still maintained?

A. Yes.

Q. And were these all the records you were able to locate?

A. Yes.

Mr. **Doar**. That is all the questions I have.

Judge **Godbold**. All right. Thank you. You may step down.

Mr. **Doar**. I want to confer with Ms. Boone, your honor, but Mr. Webb is going to question the next witness anyway.

Judge **Godbold**. All right, sir.

Mr. Webb, call your next witness.

Mr. **Webb**. The next witness is Pearl Dabreau Mapp.

Judge **Johnson**. Give me that name again.

Mr. **Webb**. Pearl Dabreau, D-A-B-R-E-A-U, Mapp, M-A-P-P.

Judge **Johnson**. Thank you.

The **Clerk**. Raise your right hand, please.

You do solemnly swear the testimony you are about to give shall be truth, the whole truth, and nothing but the truth, so help you God?

The **Witness**. I do.

The **Clerk**. Be seated, please, and state your full name for the record.

The **Witness**. Pearl Dabreau Mapp.

Judge **Godbold**. Ms. Mapp, before your testimony begins, the committee calls to your attention that under Federal law these proceedings here today are confidential.

The **Witness**. OK.

Judge **Godbold**. I am reading you from the appropriate provision of the United States Code. "All papers, documents and records of proceedings related to investigations conducted under this subsection," and this is such an investigation, "shall be confidential and shall not be disclosed by any person in any proceeding."

The **Witness**. OK.

Judge **Godbold**. Mr. Webb.

Mr. **Baron**. Mr. Chairman, during the testimony of Agent William Murphy, the committee accepted into the record House Exhibit 31, which was composed of the telephone bills for Judge Hastings' residence phone for January 1, 1981, through November 30, 1981.

At this time, the House moves into the record Exhibit 195, and that is the telephone bills for Judge Hastings' chambers for February 24, 1981, through October 20, 1981.

The **Chairman**. That is Exhibit 195 that you are moving into evidence?

Mr. **Baron**. That's correct, Mr. Chairman.

The CHAIRMAN. Is there objection?

Mr. ANDERSON. Yes, there's a relevance objection. I'm not sure what these patterns of contacts are developing, whether there is adequate foundation to show that these are meaningful. There is a prejudicial effect objection, because the record by C&P and the others have been destroyed.

In this case, Mr. Chairman, I sense that the committee's will is to receive everything that anyone can find. You should be aware that a real problem exists: Southern Bell keeps its telephone records for bloody ever; Chesapeake & Potomac has apparently a two-year record retention policy. I think, somewhat to the Chair and Vice Chair's dismay, when we were talking about stipulations, I raised this problem in some level.

What you have is the sound of one hand clapping. You have recorded everything that went out from the judge, you are creating a pattern that looks like he's calling Bill Borders. What you don't know is what came down from Washington. I think these are largely irrelevant. I also think that it is just improper to have a one-way thing eight years after the fact, when the Government had the ability to collect the whole data if it wanted it back when it was appropriate to do so. So, yes, I object.

The CHAIRMAN. Does counsel have a statement as to the relevance of this exhibit?

Mr. BARON. Yes, sir. This is all part of our presentation of evidence showing certain patterns of contacts between Mr. Borders and Judge Hastings. We have, contrary to what Mr. Anderson suggests, that we are only having one hand clapping, I think we have both hands here. We have introduced Mr. Borders' records or will be in the process of introducing Mr. Borders' records, if you will, one hand, and now we are introducing the other hand, Judge Hastings' records.

The CHAIRMAN. Will the relevance of these exhibits be established by testimony?

Mr. BARON. Very much so.

The CHAIRMAN. The objection will be overruled. We will admit the exhibit.

[The document referred to was marked House Exhibit No. 195 and was received in evidence.]

Mr. BARON. In addition, Mr. Chairman, during the testimony of Agent Murphy, the committee accepted into evidence House Exhibit 27. Those are the telephone bills from Mr. Borders' office from July 16, 1981, to August 16, 1981, and for all of September 1981. At this time, the House moves into evidence Exhibit 196, which are the telephone bills for William Borders' residence from May 1, 1981, through November 1, 1981.

The CHAIRMAN. Again, is it the representation of counsel that this Exhibit, 196, and the records in there will be established, the relevance will be established by testimony of witnesses?

Mr. BARON. That is correct.

The CHAIRMAN. Is there additional objection?

Mr. ANDERSON. Mr. Chairman, generally going back this far, there is a relevance objection, and I take it your admission of these are conditionally relevant upon the committee being satisfied that there is some foundation to warrant the production of telephone records?

The CHAIRMAN. We will admit all of these exhibits conditioned upon them being shown to be relevant by competent testimony from witnesses.

Mr. BARON. Let me say this, Mr. Chairman. In certain respects, the relevance will be shown by correlating the data on certain telephone records with the data on other telephone records, so that it is not a matter of a witness testifying about it. But it is really by having the data in evidence, it establishes the relevance because of the correlation between the data contained in the records themselves.

The CHAIRMAN. With that condition understood, we will admit the exhibit.

[The document referred to was marked House Exhibit No. 196 and was received in evidence with condition.]

Mr. BARON. Mr. Chairman, I would also seek to move into evidence at this time House Exhibit 156, and that is the complete transcript of Judge Hastings' testimony at his criminal trial. And along with Judge Hastings' testimony, I would move House Exhibit 205 into evidence, which is a calendar for the year 1981.

The CHAIRMAN. First, with regard to House Exhibit 156, is there objection to that by counsel for Judge Hastings?

Mr. ANDERSON. Inasmuch as we have proposed and intend to argue very vigorously for the inclusion of the entire record, there is no objection at this time to the part. But, again, I would emphasize that getting the whole rather than just bits is going to be a matter of some significance to us, Mr. Chairman. There is no objection to its introduction.

Also, the 1981 calendar, there is no objection to its introduction either.

The CHAIRMAN. Both exhibits will be admitted.

[The documents referred to were marked House Exhibit Nos. 156 and 205 and were received in evidence.]

Mr. BARON. Next, Mr. Chairman, the committee has already received into evidence House Exhibit 28. They are the telephone message logs of Mr. William Borders' office for September 10, 1981.

At this time, the House moves into evidence House Exhibit 212, message logs for April 27, 1981; House Exhibit 213, message logs for April 30, 1981; and House Exhibit 214, message logs from May 1, 1981.

The CHAIRMAN. Again, is it the representation of counsel that there will be evidence introduced to establish the relevance of these records to this case?

Mr. BARON. Yes, sir. In general, either through testimony or through the correlation of the data and the information contained in the records themselves with other records.

The CHAIRMAN. Is there objection?

Mr. ANDERSON. If I could have a standing relevance, conditional relevance, unfair prejudice, outweighs probative value, then I will not repeat it every time. But when we get back prior to the July area, if I could just wave my finger and you understand that is what I said, that is it.

The CHAIRMAN. We will admit the exhibits. What is the exhibit number again?

Mr. BARON. House Exhibits 212, 213, and 214.

The CHAIRMAN. The three exhibits will be admitted conditioned upon their relevance being established by later testimony.

[The documents referred to were marked House Exhibit Nos. 212, 213, and 214 and were received in evidence.]

Mr. BARON. Finally, Mr. Chairman, at this time, I would like to move into evidence Stipulations 269, 272, 277, 278, 279, 280, 284, 285, and 286. Then with your permission, I will read each of those.

The CHAIRMAN. Is there objection, or does counsel desire some period of time in which to review those?

Mr. ANDERSON. Mr. Chairman, these are repetitious, and my objection remains the same. If there were a witness here instead of a stipulation, I would say asked and answered. You will now hear read as stipulations counsel's view of what the last set of documents show.

Senator RUDMAN. Mr. Chairman?

The CHAIRMAN. Senator Rudman.

Senator RUDMAN. Inquiry of the Chair. The House has followed a procedure of reading these stipulations into the record each and every time. I do not understand that. We have copies of them. They will be part of the printed record of this committee. Obviously, both sides have them. Why are we reading them into the record, if I may inquire?

The CHAIRMAN. Will counsel respond as to why you see it necessary to read these into the record after they are admitted?

Mr. BARON. Mr. Chairman, my enthusiasm for reading the stipulations is under control. If the committee is satisfied that by giving you the numbers and everyone is agreed what those stipulations contain and that they will then be reproduced in the record so that there is no ambiguity as to what has now been stipulated to, that is fine.

Senator RUDMAN. If I could just inquire of the Chair, am I correct, Mr. Chairman, that obviously in my view we would have to print those stipulations as part of the addenda to our committee report? Am I correct?

The CHAIRMAN. I think you are clearly correct that once admitted into evidence the stipulations will be printed as part of the record.

Senator RUDMAN. Well, then, I would hope that the Chair might rule we do not have to do that, unless somebody here feels they ought to be read into the printed record.

Mr. BRYANT. Mr. Chairman?

The CHAIRMAN. Representative Bryant, did you have a——

Mr. BRYANT. Without commenting on the stipulations which Mr. Baron is handling, I would say that the other times we have read them into the record is they have come in as part of a sequential presentation of our case with a witness sitting here, and we have in an orderly fashion presented our case. That is why we read them. We would not want to forego the opportunity to do that again. However, in this particular situation, I do not know that we necessarily have to——

Senator **Rudman**. Mr. Chairman, I understand that fully. I mean, obviously, the reason I raised the point that I did is that there is no witness in the chair. I have been there before, Mr. Bryant. So if there is a witness in the chair, you do it for sequential purposes. If there is not, we could be here all day reading stipulations.

The **Chairman**. Mr. Anderson, did you have a comment?

Mr. **Anderson**. Yes, I do have a comment. I understand why the House managers want to do it. I rather admire the technique in the back of my trial advocacy. They want them to appear in the transcript at the point where they think it is relevant so that the Senator reading along will see that here is the fact. I think that is perfectly appropriate.

I will only note that I wanted through the reporters to have the transcript of the tape as they understood it and it was heard in this room appear in the transcript at the same place. One way or the other, either it is all an addendum, where Senators have to flip to the back and say, see Addendum 1 for stipulations, see Addendum 2 for transcripts, or every Senator as he reads through the printed record will see whatever stipulation they choose to publish, will see whatever transcript of—will see the court reporter's transcript of what was heard in this room.

Just be fair about this. Either the stuff comes in as we wish it published, or either side does, or it comes in back there in Appendix 15. But all I am asking here is both ways.

The **Chairman**. Senator Leahy had a comment.

Senator **Leahy**. I think the easiest thing to do is if we are going to agree to them anyway, just also make as part of the agreement that they be printed in the transcript. We do this all the time in hearings. There is no reason why we cannot just stick them right in there. I think Mr. Anderson makes a fine point. If you are really going to read it, you are far less apt to read it if it is in the back. Tell them to just put it in the transcript. Print it that way.

The **Chairman**. We will admit these stipulations and print them in the record at the point where they are admitted without them being read. In the future, if there is a need to read a particular stipulation in order to have the flow of testimony understandable, we will permit that.

[Stipulation Nos. 269, 272, 277, 278, 279, 280, 284, 285, and 286 were received in evidence.]

The stipulations are as follows:

No. 269. On February 20, 1981, at 7:30 a.m., a call was placed from Judge Hastings' home telephone number (305-731-8176) to William Borders' home telephone number (202-398-6321). The call lasted between two and three minutes.

No. 272. On April 9, 1981, at approximately 10:40 a.m., Judge Hastings called William Borders' office. He left a message for William Borders to call. The message reads: "at office between 12 and 1."

No. 277. A telephone message slip for "WAB" at the office of William Borders states: "At home at 6:30 only time he will be at home."

No. 278. A telephone message slip for "WAB" left at the offices of William A. Borders indicates a telephone call from "Al C. Hastings." The message slip is undated.

No. 279. A telephone message slip at the offices of William A. Borders, dated May 4, reflects an "urgent" call from "Al C. Hastings," the telephone number (305) 350-4289 and the message: "will await call between 12 and 1 from you." The message slip appears on a page of message book which shows calls between 10:00 and 10:20.

No. 280. On May 6, 1981, at 12:07 a.m., a telephone call was made from a phone number in Madison, New Jersey, to a phone number in Washington, DC. That call was charged to Judge Hastings' residence phone.

No. 284. On July 5, 1981, a telephone call was placed from Judge Hastings' home phone number to William Borders' home phone number. The call lasted less than 1 minute.

No. 285. Judge Hastings called William Borders on July 7, 1981, at 11:56 a.m. The call lasted less than 1 minute.

No. 286. A telephone message slip left at the offices of William Borders, dated July 9, at 11:50, for "Bill" from "Al Hastings" bears the following message: "Sat morning Air Fla. #91 at 10:45 from Key West Will be departing at 1:00."

The CHAIRMAN. I think Mr. Anderson makes a good point that the transcript of recorded statements should be included in the record so that members of the Senate can see that without having to look through appendices to find it. We will see to it that the record we submit to the Senate does include the transcripts of that recorded testimony.

Mr. BARON. Mr. Chairman, the House concurs fully with both suggestions.

The CHAIRMAN. Mr. Anderson, is that satisfactory?

Mr. ANDERSON. The transcript is prepared by the reporters so that—I want the quality of the transcript and the recording to be the same as the quality of——

The CHAIRMAN. No, we would have the transcripts as introduced into evidence.

Mr. ANDERSON. Then I would prefer you put them back in an appendix. Roger Shuy, I admire his ability to——

The CHAIRMAN. We will accede to—I do not think we will. We will go ahead and put them in the record as they were introduced into evidence. If there is a specific question about any part of those transcripts, we will certainly entertain those objections, but not a general objection.

Mr. ANDERSON. Mr. Chairman, you have raised the question yourself. Are you going to put in Professor Shuy's underscoring? Are you going to put in his editorial insertions? What are we putting into the record here?

The CHAIRMAN. Counsel, the Chair has made a ruling on this. Let us not continue to argue it after the ruling.

Would the House proceed with its next witness?

Mr. BRYANT. The House must acknowledge that we did not anticipate how rapidly we would move this morning. Our next witness is not going to be here until after what is usually your lunch recess.

The CHAIRMAN. Is there no useful way the House can proceed for the next 15 minutes? It is difficult to get a quorum of this committee, and when we have one, I am very loath to dismiss us.

Mr. BRYANT. We are in complete agreement, but we are at a point where we have no witnesses ready.

The CHAIRMAN. In the future, we would appreciate if you could have one or two witnesses more than you anticipate needing so that we are not in the position of having to terminate the hearing when we do have a quorum, and we are ready to take testimony.

Mr. BRYANT. We apologize for the miscalculation. We just did not think it would move so fast this morning.

The CHAIRMAN. In light of the fact that the House is not prepared to go forward, we will recess until 1:30, at which time we will reconvene.

[Whereupon, at 11:48 a.m., the committee recessed, to reconvene at 1:30 p.m, this same day.]

AFTERNOON SESSION

The CHAIRMAN. The committee will reconvene.

Would the House please call its next witness at this point?

Mr. BRYANT. The House calls Donna Myrill, Mr. Chairman, to be presented by Mr. Synar.

The CHAIRMAN. Would you please raise your right hand? Do you, Donna Myrill, swear and affirm that the evidence you shall give in the case now pending between the United States and Judge Alcee L. Hastings shall be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. MYRILL. I do.

The CHAIRMAN. Please be seated.

Mr. SYNAR. Mr. Chairman, before I begin the examination of Ms. Myrill, I would like to offer into evidence Stipulations Nos. 71 and 72.

The CHAIRMAN. Is there any objection to those two stipulations?

Mr. ANDERSON. I do not think so.

Mr. SYNAR. Mr. Chairman, stipulation number——

The CHAIRMAN. Can we just hold up just a moment here? I am not sure Mr. Anderson had a chance to see what those were yet.

Mr. ANDERSON. Stipulation?

Mr. SYNAR. 71 and 72.

Mr. ANDERSON. No objection.

The CHAIRMAN. They will be admitted.

[Stipulation Nos. 71 and 72 were received in evidence.]

Mr. SYNAR. Mr. Chairman, Stipulation 71 is that on September 12, 1981, William Borders flew from Orlando, Florida, to Baltimore-Washington International Airport on Eastern Airlines flight 664.

Stipulation 72 is on September 12, 1981, Eastern Airlines flight number 664 arrived at the gate at Baltimore-Washington International Airport at 8:58 p.m.

Good afternoon. May we have your name again?

TESTIMONY OF DONNA MYRILL

DIRECT EXAMINATION

Ms. **Myrill**. Donna Myrill.

Mr. **Synar**. Ms. Myrill, if you will pull that microphone very close to you, just pull it across.

What was your name in 1981?

Ms. **Myrill**. Donna Mendez.

Mr. **Synar**. You are going to have to lean forward in the chair or pull that back just a little bit farther. There you go.

Where do you reside?

Ms. **Myrill**. In Long Island in New York.

Mr. **Synar**. And where are you presently employed?

Ms. **Myrill**. Queens District Attorney's Office.

Mr. **Synar**. And how long have you worked there?

Ms. **Myrill**. Approximately five years.

Mr. **Synar**. And are you employed there as an attorney?

Ms. **Myrill**. Yes.

Mr. **Synar**. And when did you graduate from law school?

Ms. **Myrill**. 1983.

Mr. **Synar**. And were you employed in September of 1981?

Ms. **Myrill**. No.

Mr. **Synar**. Where were you living at the time?

Ms. **Myrill**. In Washington.

Mr. **Synar**. And what were you doing?

Ms. **Myrill**. I was a law student.

Mr. **Synar**. At what——

Ms. **Myrill**. Howard University.

Mr. **Synar**. At Howard University? And do you recall attending a social gathering in Washington, DC in September of 1981 which included Judge Hastings?

Ms. **Myrill**. Yes.

Mr. **Synar**. Do you recall the date of that gathering?

Ms. **Myrill**. No.

Mr. **Synar**. Had you ever attended any other social gathering in Washington, DC which included Judge Hastings?

Ms. **Myrill**. I do not remember.

Mr. **Synar**. OK. Where did the gathering occur?

Ms. **Myrill**. I believe at the Sheraton Hotel.

Mr. **Synar**. And how did you come to be there?

Ms. **Myrill**. I was invited.

Mr. **Synar**. By whom?

Ms. **Myrill**. Jesse McCrary.

Mr. **Synar**. And what were you invited for?

Ms. **Myrill**. Dinner.

Mr. **Synar**. OK. And how did you know Mr. McCrary?

Ms. **Myrill**. I worked in his law firm in Miami.

Mr. **Synar**. And what was your capacity there?

Ms. **Myrill**. Paralegal, secretary.

Mr. **Synar**. OK. And did you also know Judge Hastings at the time?

Ms. **Myrill**. At what time?

Mr. **Synar**. In September of 1981.

Ms. MYRILL. Yes. I knew of him, yes.

Mr. SYNAR. How did you know of him?

Ms. MYRILL. I guess through Mr. McCrary.

Mr. SYNAR. OK. And approximately what time did you go to the Sheraton Hotel in September of 1981?

Ms. MYRILL. I believe about 8:00 o'clock.

Mr. SYNAR. And were there other people there?

Ms. MYRILL. Yes.

Mr. SYNAR. And did you know those people in the room?

Ms. MYRILL. Yes, some of them. Some I did not know, but some I did.

Mr. SYNAR. How many people were in the room?

Ms. MYRILL. Four, aside from myself.

Mr. SYNAR. Men? Women?

Ms. MYRILL. Mr. McCrary, I believe Mr. Hastings, and two other women.

Mr. SYNAR. OK. Did you know those two other women?

Ms. MYRILL. No.

Mr. SYNAR. OK. Now, after you arrived at the hotel room, did you go to dinner right away?

Ms. MYRILL. No, I do not—no.

Mr. SYNAR. Well, how long was it before you did go to dinner?

Ms. MYRILL. I recall it being a long time. I would just estimate about two hours or so.

Mr. SYNAR. OK. And what was happening while you all were together in the room before dinner?

Ms. MYRILL. I really do not recall too well.

Mr. SYNAR. Well, was there conversation going on?

Mr. ANDERSON. Objection, Your Honor. This is leading. The witness said she does not recall. This is suggesting answers to the questions. If she does not recall—this becomes a matter of some importance when we are dealing with events that go back nine years, that the witness' recollection not be overly refreshed in the presence of the trial. If she said she does not recall, that is fair enough after eight years.

The CHAIRMAN. Would counsel rephrase the question so as not to lead the witness, if possible?

Mr. SYNAR. Thank you, Mr. Chairman.

Do you know, Ms. Myrill, why you did not go to dinner right away?

Ms. MYRILL. We were waiting for somebody to arrive.

Mr. SYNAR. And did Judge Hastings say anything relating to the group with respect to whom you were waiting?

Ms. MYRILL. I do not recall if it was specifically Judge Hastings who said something. It could have been Mr. McCrary as well. I do not recall who, which one of them.

Mr. SYNAR. One of them did say?

Ms. MYRILL. Yes.

Mr. SYNAR. That you were waiting?

Ms. MYRILL. We were waiting for somebody else to arrive.

Mr. SYNAR. All right. Now, did you know who Bill Borders was before that evening?

Ms. MYRILL. Yes.

Mr. SYNAR. And how did you know him?

Ms. MYRILL. Through Mr. McCrary.

Mr. SYNAR. Had he had association with him?

Ms. MYRILL. Yes, I—yes.

Mr. SYNAR. OK. So the fact that Judge Hastings and/or Mr. McCrary said you were waiting for someone—is that correct? Let me repeat that.

One of the two said that you all were waiting for someone.

Ms. MYRILL. Yes. That is my recollection.

Mr. SYNAR. OK. Now, did they say who they were waiting for at the time?

Ms. MYRILL. My recollection is William Borders.

Mr. SYNAR. OK. Now, when William Borders, in fact, arrived in the evening at the hotel room, were you surprised?

Ms. MYRILL. No, I was not surprised.

Mr. SYNAR. All right. Approximately how much time had passed from the time when you arrived at the hotel room and Mr. Borders arrived?

Ms. MYRILL. As I said before, I would estimate two hours.

Mr. SYNAR. About two hours. Now, did Judge Hastings seem surprised when Mr. Borders came in?

Ms. MYRILL. No.

Mr. SYNAR. All right. What happened after Mr. Borders arrived?

Ms. MYRILL. We went to dinner.

Mr. SYNAR. All right. And how late did you all stay in the restaurant?

Ms. MYRILL. I do not recall. We had dinner, and that was it. However long a dinner would take. I do not recall specifically how long we stayed there.

Mr. SYNAR. OK. Mr. Chairman, at this time, I will offer into evidence Stipulation Nos. 73 and 74.

Mr. ANDERSON. Without objection.

The CHAIRMAN. The stipulations will be admitted.

[Stipulation Nos. 73 and 74 were received in evidence.]

Mr. SYNAR. With your agreement, Mr. Chairman, I will read these into the record.

Stipulation No. 73: On September 12, 1981, Judge Hastings was registered at the Sheraton-Washington Hotel, room 7022.

Stipulation No. 74: On September 12, 1981, Jesse McCrary, a Florida attorney, was registered at the Sheraton-Washington Hotel, room 7024, the room next to Judge Hastings.

We will pass.

The CHAIRMAN. Is there cross-examination of this witness?

Mr. ANDERSON. Relatively brief, Mr. Chairman.

CROSS-EXAMINATION

Good afternoon, Ms. Myrill.

Ms. MYRILL. Good afternoon.

Mr. ANDERSON. My name is Terry Anderson.

The events you are talking about occurred back in September of 1981, apparently. Is that your recollection?

Ms. MYRILL. Yes.

Mr. **Anderson**. And did there come a time when an agent William Murphy of the FBI called and interviewed you about these events on the telephone? Do you recall that?

Ms. **Myrill**. No.

Mr. **Anderson**. Do you recall anyone ever calling you?

Ms. **Myrill**. To tell me to be here?

Mr. **Anderson**. No, no, no, not to be here. I am talking about in 1983. Did anyone ever call to ask you about the events that Mr. Synar has just asked you about?

Ms. **Myrill**. Yes, I guess so.

Mr. **Anderson**. And do you recall who that was?

Ms. **Myrill**. No.

Mr. **Anderson**. Did he identify himself as an agent of the Federal Bureau of Investigation?

Ms. **Myrill**. I do not recall ever speaking to an FBI agent. Not that I——

Mr. **Anderson**. So you have no recollection today of having been called in January of 1983 and interviewed by telephone in these matters?

Ms. **Myrill**. I could have been, but I do not have any recollection right now of that.

Mr. **Anderson**. Can you search your recollection just for a moment? I realize it is very hard, ma'am. I am not——

Ms. **Myrill**. In 1983 . . . I do not specifically recall.

Mr. **Anderson**. Well, who is the first person that you do recall today who came to talk to you about these events?

Ms. **Myrill**. An attorney by the name of Boar, Doar.

Mr. **Anderson**. Mr. Doar? John Doar, perhaps?

Ms. **Myrill**. I think so.

Mr. **Anderson**. And when did that take place?

Ms. **Myrill**. I do not know.

Mr. **Anderson**. Where did it take place?

Ms. **Myrill**. The interview?

Mr. **Anderson**. Yes.

Ms. **Myrill**. I do not recall.

Mr. **Anderson**. Was it in New York or . . .?

Ms. **Myrill**. Well, I saw him in person, but I do not recall if that was in New York.

Mr. **Anderson**. When you met him, did you know who Mr. Doar was by reputation?

Ms. **Myrill**. Before I met him?

Mr. **Anderson**. Yes.

Ms. **Myrill**. By reputation, no. I had never heard of him before.

Mr. **Anderson**. And can you aid this committee at all by fixing roughly when that first meeting would have occurred?

Ms. **Myrill**. It would have occurred when—prior to the hearing or whatever they had in Florida. I was flown down to testify in Florida. So it was prior to that, and he was—I met him as a result of that.

Mr. **Anderson**. Now, you were flown down to testify in Florida? Is that your recollection?

Ms. **Myrill**. Right.

Mr. **Anderson**. Could that have been Atlanta?

Ms. **Myrill**. Right. I think so, yes.

Mr. **Anderson**. And about how long before that did you meet with Mr. Doar?

Ms. **Myrill**. I do not know.

Mr. **Anderson**. Well, do you recall what Mr. Doar said to you on that occasion and what you said to him?

Ms. **Myrill**. About what?

Mr. **Anderson**. Well, I take it Mr. Doar was talking to you about the events of September 1981.

Ms. **Myrill**. Oh, do I specifically remember what I told him?

Mr. **Anderson**. And, even more important from my purposes, do you remember what questions he asked you?

Ms. **Myrill**. About the events you are talking about?

Mr. **Anderson**. Yes.

Ms. **Myrill**. The same as I just talked about before.

Mr. **Anderson**. And to the best of your recollection, that is the first time that anyone had interviewed you about those events?

Ms. **Myrill**. Oh, yes.

Mr. **Anderson**. Are you——

Ms. **Myrill**. For that event, yes.

Mr. **Anderson**. You are confident of that? I am not trying to——

Ms. **Myrill**. No. I am sure.

Mr. **Anderson**. I have notes from an FBI—what are purported to be an interview of you back in January of 1983. I am just trying to push and see whether you have any recollection of that having taken place.

Ms. **Myrill**. Unless that was before Mr.—as a result of that interview, then, I was given—you know, Mr. Doar contacted me because he was the person to ask me the questions at that time.

Mr. **Anderson**. But no one back in—way back, long before that, that you recall?

Ms. **Myrill**. No. I was called because of that hearing.

Mr. **Anderson**. And in the course of his interview with you, did it become a matter of some dispute as to who said what and whether anyone said Mr. Borders was coming, whether anyone was surprised, not surprised? I realize it is hard to remember, but do you recall the questions Mr. Doar asked you as being in any way suggestive?

Ms. **Myrill**. No.

Mr. **Anderson**. He did not say, "Weren't you waiting for someone?" Or did he just say, "What happened?"

Ms. **Myrill**. No. I do not recall them being suggestive. I remember.

Mr. **Anderson**. But it is pretty firmly your recollection today that someone did say that you were waiting for someone? That is a firm recollection you have from September 11, 1981?

Ms. **Myrill**. Yes.

Mr. **Anderson**. Why is that more memorable than your interview with John Doar? Why would you recall the specifics of that but not have the specifics of——

Ms. **Myrill**. Well, I——

Mr. **Anderson**. And I am——

Ms. **Myrill**. No, I am going to——

Mr. **Anderson**. Please.

Ms. MYRILL. When you are asking me about Mr. Doar, that is the first time I have had an opportunity to think about that. In fact, I have not thought about that in—obviously since I spoke to Mr. Doar. But I have thought about that dinner since then.

Mr. ANDERSON. Well, but the first time in your present recollection you were contacted about the dinner was shortly before you testified before the investigating—this group in Atlanta?

Ms. MYRILL. Right.

Mr. ANDERSON. So you had not thought about the evening of September 11th until shortly before you testified in Atlanta; is that correct?

Ms. MYRILL. No. But after I had the conversation with Mr. Doar, obviously before I had the chance to testify, some time has passed. So I thought about it then.

Mr. ANDERSON. And then you testified in Atlanta?

Ms. MYRILL. Right.

Mr. ANDERSON. And since that time, you have thought about it?

Ms. MYRILL. No. Since that time, I have forgotten about it. And here I am again today. So I——

Mr. ANDERSON. When was the next time after your testimony in Atlanta that you were contacted regarding this matter?

Ms. MYRILL. This year. I do not know what month they came to see me in New York. So I have had since the attorneys contacted me earlier this year until now to think about it.

Mr. ANDERSON. And you understand the significance of this proceeding, do you not?

Ms. MYRILL. This is a trial.

Mr. ANDERSON. Yes, this is a trial of impeachment.

Ms. MYRILL. Right.

Mr. ANDERSON. You understand that one of the articles suggests that there was testimony, false testimony given when Judge Hastings said he was surprised by the arrival of Bill Borders?

Ms. MYRILL. I do not know anything about that testimony.

Mr. ANDERSON. Well, there is a specific article that says that Judge Hastings in 1983 testified that it was his recollection that he was surprised when Mr. Borders arrived. One article of the Bill of Impeachment on which they remove a Federal judge says that that was a lie. Your testimony here is called by the House to say that you all knew Mr. Borders was there. Ms. Myrill, are you that confident in your recollection that someone had said Bill Borders was coming on September 11, 1981?

Ms. MYRILL. Yes, I remember that.

Mr. ANDERSON. I have no further questions.

The **CHAIRMAN.** Is there redirect examination?

REDIRECT EXAMINATION

Mr. SYNAR. Yes. Mr. Chairman, just one point of inquiry. Mr. Anderson has represented an interview of Ms. Myrill by Agent Murphy or another FBI agent in 1981. We are not aware of that. If they could provide us a memo or a calendar of that, we would be very interested in it.

RECROSS EXAMINATION

Mr. **Anderson**. Mr. Chairman, I would like to proffer to the committee at this time, although Agent Murphy is gone, something that was supplied to me by Mr. Doar which purports to be his telephone interview notes dated January 17, 1983 of one woman named Donna Mendez, who was at that time located at 7605 Wildwood Drive, Takoma Park, Maryland, purporting to have a telephone number of 301-445-4070, being on the Law Journal at Howard University with a telephone number, in her third year at Howard.

Would that have been you then?

Ms. **Myrill**. Oh, yes.

Mr. **Anderson**. Thank you.

The **Chairman**. I would suggest that you provide a copy of that to the House managers. If either party wishes to have that introduced into evidence, you can propose that. But there has been no suggestion to do that, and I do not really know the relevance of it at this point at any rate.

Mr. **Anderson**. It is only to show that she had forgotten something.

The **Chairman**. Is there additional redirect?

Mr. **Synar**. No.

The **Chairman**. At this point, is there any reason this witness cannot be excused?

Senator **Pryor**. Mr. Chairman?

The **Chairman**. Oh, excuse me. I forgot there might be some questions here.

Yes, Senator Pryor.

EXAMINATION BY THE COMMITTEE

Senator **Pryor**. Yes, thank you, Mr. Chairman.

Mr. Chairman, I would like to ask a series of just three or four very brief questions that do not take a lot of explanation.

When you were in the room with Judge Hastings in the Sheraton Carlton or Sheraton something hotel in preparation for going to dinner, were there phone calls that were made to Judge Hastings while you were in the two-hour waiting period, roughly from 8:00 p.m. to 10:00 p.m.? Were there any phone calls that came to Judge Hastings that you could recall?

Ms. **Myrill**. No, I do not recall.

Senator **Pryor**. Mr. McCrary, the individual who invited you for the evening, when he made the invitation to you for the evening dinner and social period, did he tell you at that time that you were joining other individuals for the evening?

Ms. **Myrill**. I do not remember.

Senator **Pryor**. May I ask you where the actual dinner took place?

Ms. **Myrill**. Downstairs in the hotel.

Senator **Pryor**. Do you recall if those reservations were made by Judge Hastings? Were the reservations in Judge Hastings' name?

Ms. **Myrill**. I have no idea.

Senator **Pryor**. When Mr. Borders joined the party, were you at dinner at that point or still upstairs in the room?

Ms. **Myrill**. In the room.

Senator PRYOR. In the room. Did anyone appear surprised that Mr. Borders came into the room?

Ms. MYRILL. Not to my memory, no.

Senator PRYOR. Do you recall Mr. Borders walking into the room?

Ms. MYRILL. Yes, I do.

Senator PRYOR. Do you recall if he had with him a suitcase?

Ms. MYRILL. No, I do not recall.

Senator PRYOR. In the course of the evening, did Mr. Borders and Judge Hastings have private conversations? I am not asking that you repeat any hearsay, but did you see them talking privately in conversation where they might not have wanted the other people in the party to listen or participate?

Ms. MYRILL. No, I did not take any note of that. I do not recall that specifically.

Senator PRYOR. Did Mr. Borders or Judge Hastings leave this party at any time during the evening and then, say, return; go away for a while and then come back?

Ms. MYRILL. I do not recall that.

Senator PRYOR. Thank you.

The CHAIRMAN. Are there other questions by members of the committee?

[No response.]

The CHAIRMAN. If not, we appreciate very much your testimony, Ms. Myrill, and you are excused.

Ms. MYRILL. Thank you.

[Witness excused.]

The CHAIRMAN. Would the House call its next witness, please?

Mr. BRYANT. The House calls Essie Thompson, Mr. Chairman. She will be examined by Mr. Fish.

The CHAIRMAN. Would you raise your right hand? Do you, Essie Thompson, swear and affirm that the evidence you shall give in the case now pending between the United States and Judge Alcee L. Hastings shall be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. THOMPSON. I do.

The CHAIRMAN. Please be seated.

TESTIMONY OF ESSIE M. THOMPSON

DIRECT EXAMINATION

Mr. FISH. Please state your full name.

Ms. THOMPSON. Essie M. Thompson.

Mr. FISH. Where do you live, Ms. Thompson?

Ms. THOMPSON. Valrico, Florida.

Mr. FISH. And what is your occupation?

Ms. THOMPSON. I am a certified public accountant.

Mr. FISH. Were you living in Valrico in 1981?

Ms. THOMPSON. No, I was not.

Mr. FISH. Where were you living in 1981?

Ms. THOMPSON. In Miami, Florida.

Mr. FISH. Did you know Judge Alcee Hastings in 1981?

Ms. THOMPSON. Yes, I did.

Mr. Fish. Approximately when did you first meet Judge Hastings?

Ms. Thompson. In December, 1980.

Mr. Fish. Was your relationship with Judge Hastings a social or a business relationship?

Ms. Thompson. A social relationship.

Mr. Fish. And does that friendship continue today?

Ms. Thompson. Yes, it does.

Mr. Fish. Have you seen him in person in the last year?

Ms. Thompson. Yes.

Mr. Fish. Roughly how many times have you seen Judge Hastings in the last year?

Ms. Thompson. Approximately four.

Mr. Fish. Turning your attention, please, to September of 1981, did you accompany Judge Hastings to the Fontainebleau Hotel for dinner on September 16, 1981?

Ms. Thompson. Yes, I did.

Mr. Fish. How were the arrangements made for you to have dinner with Judge Hastings on the 16th?

Ms. Thompson. On the day before the 16th, which would have been September 15th, he called me at my office to ask if I was going to be free the next evening and, if so, if I would like to go to dinner.

Mr. Fish. Did you make the final arrangements for the time of that date in this conversation?

Ms. Thompson. No. He indicated that he would call me on the next day to give me specifics.

Mr. Fish. On Tuesday, September 15th, did Judge Hastings say anything about anyone joining the two of you for dinner?

Ms. Thompson. No, he did not——

Mr. Anderson. Objection, Your Honor. That is leading. That is improper. We are moving through critical events here one at a time. That is a question that suggests an answer.

The **Chairman.** Would counsel restate the question preferably not to lead the witness to any particular answer?

Mr. Fish. The only answer I was seeking was either a yes or a no, Mr. Chairman.

The **Chairman.** Perhaps you would restate the question to the witness.

Mr. Fish. On September 15th, did Judge Hastings indicate that the two of you would be dining alone?

Ms. Thompson. No, he did not indicate that, no.

Mr. Fish. Did he indicate to you that you would not be dining alone?

Ms. Thompson. No.

Mr. Fish. Thank you.

Was it your impression that it would just be the two of you?

Mr. Anderson. Objection, Your Honor. She has testified to what Judge Hastings said. This is a respondent. Her impressions, it seems to me, unless there is a foundation for them, are irrelevant.

The **Chairman.** There is an objection. The objection will be overruled. The witness can respond to the question.

Ms. Thompson. What question can I respond to?

Mr. Fish. The question was: Was it your impression that it would just be the two of you for dinner?

Ms. Thompson. Yes, that was my impression.

Mr. Fish. Did Judge Hastings, in fact, call the next day as he said he would?

Ms. Thompson. Yes, he did.

Mr. Fish. And what was the substance of that conversation?

Ms. Thompson. He indicated at that time that he had a judges meeting that would probably end around 6:30 and he should be by to pick me up about 7:00 o'clock.

Mr. Fish. Did he at that time indicate where you would be having dinner?

Ms. Thompson. Not specifically. He said we were going on the beach, but he did not say where.

Mr. Fish. Did he say at that time that he was expecting anyone to be joining you?

Mr. Anderson. Objection; leading.

The **Chairman.** The objection is overruled. The witness can answer.

Mr. Fish. The question was: Did he say at that time that he was expecting anyone to be joining you?

Ms. Thompson. No.

Mr. Fish. Thank you. And did Judge Hastings, in fact, pick you up that evening at around 7:00 p.m.?

Ms. Thompson. Yes, he did.

Mr. Fish. And at approximately what time did you leave the house?

Ms. Thompson. About 10 minutes after he arrived.

Mr. Fish. And during the drive, did you learn where Judge Hastings had in mind for dinner?

Ms. Thompson. Yes.

Mr. Fish. And where was that place?

Ms. Thompson. The Fontainebleau Hotel on Miami Beach.

Mr. Fish. Had you ever before been to the Fontainebleau Hotel?

Ms. Thompson. No, I had not.

Mr. Fish. Did Judge Hastings indicate whether he had ever been there before?

Ms. Thompson. Yes.

Mr. Fish. How long was the ride from where you were living at that time in September 1981 to the Fontainebleau?

Ms. Thompson. About 20, 25 minutes.

Mr. Fish. And during the course of this trip, did Judge Hastings mention that he was expecting friends to join you for dinner?

Ms. Thompson. No, he did not.

Mr. Fish. When you arrived at the Fontainebleau, what did you do?

Ms. Thompson. Well, after we entered the hotel, we looked around the lobby, and then we proceeded to the dining room.

Mr. Fish. Could you tell us why you did not go directly to the dining room?

Ms. Thompson. There was not any specific reason why we did not go. We were just admiring the scenery, and we looked in two other restaurants, and then we proceeded on.

Mr. **Fish**. Judge Hastings was not familiar with the hotel dining areas?

Mr. **Anderson**. Objection, Your Honor; leading again. We are on a critical day.

The **Chairman**. Could counsel restate that question?

Mr. **Fish**. Did Judge Hastings indicate that he had not been in the Fontainebleau since renovations had been made?

Ms. **Thompson**. Yes, he had indicated he had not been there, you know, since they recently renovated, yes.

Mr. **Fish**. Did you look in any other restaurants or dining areas of the hotel——

Ms. **Thompson**. Yes.

Mr. **Fish** [continuing]. Before you went to the main dining room?

Ms. **Thompson**. Yes, we did.

Mr. **Fish**. As you were looking into other dining areas, did Judge Hastings say anything about meeting anyone else for dinner?

Ms. **Thompson**. No, he did not.

Mr. **Fish**. Did you eventually go to the main dining room?

Ms. **Thompson**. Yes, we did.

Mr. **Fish**. Do you recall the name of that dining room?

Ms. **Thompson**. The Dining Gallery, or Galleries.

Mr. **Fish**. And once you arrived at the entrance to the dining room, what did Judge Hastings do?

Ms. **Thompson**. Well, after greeting the hostess, he said there were reservations for Hastings, and we were seated.

Mr. **Fish**. Did he tell the hostess that he was expecting anyone else to be joining you?

Ms. **Thompson**. Not that I recall, no.

Mr. **Fish**. Were you then seated?

Ms. **Thompson**. Yes.

Mr. **Fish**. And how many places were set at the table at which you were seated?

Ms. **Thompson**. As far as I can remember, there were four.

Mr. **Fish**. Were any of these places removed?

Ms. **Thompson**. I believe so, yes.

Mr. **Fish**. Do you remember how many were removed?

Ms. **Thompson**. Not more than two. [Laughter.]

Mr. **Fish**. When the places were taken away, did Judge Hastings object or say to the waiter that he was expecting someone else to be joining him?

Ms. **Thompson**. No, he did not.

Mr. **Fish**. During the course of the dinner, did Judge Hastings leave the table at any time?

Ms. **Thompson**. Yes, he did.

Mr. **Fish**. At approximately what point in the course of your dinner did he leave the table?

Ms. **Thompson**. It was after we had ordered drinks but before the dinner arrived.

Mr. **Fish**. And about how long was he gone for?

Ms. **Thompson**. About 5 minutes.

Mr. **Fish**. Did he say where he was going when he got up?

Ms. **Thompson**. No, he did not.

Mr. **Fish**. When he came back, did he say what he had been doing?

Ms. **Thompson**. Well, when he returned, he indicated that he had went out to look for some friends that he was expecting from DC.

Mr. **Fish**. At that point, did Judge Hastings say anything about those friends joining the two of you for dinner?

Ms. **Thompson**. No, not that I recall.

Mr. **Fish**. And did anyone, in fact, join you at any time during the dinner?

Ms. **Thompson**. No.

Mr. **Fish**. Did anyone stop by the table and talk?

Ms. **Thompson**. No.

Mr. **Fish**. Approximately how long did you spend at dinner?

Ms. **Thompson**. Approximately two hours.

Mr. **Fish**. Aside from the time that you just described, was Judge Hastings out of your presence at any other time during the course of your evening at the Fontainebleau?

Ms. **Thompson**. No, only when we both went to the restroom on our way out of the hotel.

Mr. **Fish**. And approximately how long were the two of you apart when both of you went to the rest rooms?

Ms. **Thompson**. About 5 minutes.

Mr. **Fish**. Did you make any more stops on your way out?

Ms. **Thompson**. No.

Mr. **Fish**. Ms. Thompson, during the course of the time that the two of you were at the Fontainebleau, did Judge Hastings, to your knowledge, page anybody?

Ms. **Thompson**. Not to my knowledge, no.

Mr. **Fish**. During the course of the time the two of you were at the Fontainebleau, did Judge Hastings, to your knowledge, speak to any member of the hotel staff in an attempt to find someone he was expecting to meet?

Ms. **Thompson**. Not to my knowledge, no.

Mr. **Fish**. During the course of making the arrangements for your date on September 16th and during the actual date, the dinner date itself, did Judge Hastings ever mention to you the name of William Borders?

Ms. **Thompson**. No.

Mr. **Fish**. Thank you very much, Ms. Thompson.

Mr. Chairman, the House has no further questions at this time.

The **Chairman**. Is there cross-examination?

CROSS-EXAMINATION

Mr. **Anderson**. Very briefly.

Ms. Thompson, my name is Terry Anderson. I am counsel for Judge Hastings in these proceedings.

Now, you were called to testify at the trial of William Borders, were you not?

Ms. **Thompson**. Yes.

Mr. **Anderson**. You were called to testify at the trial of Judge Alcee Hastings, were you not?

Ms. **Thompson**. Yes, I was.

Mr. **Anderson**. On both occasions, you were examined by counsel for the Government, were you not?

Ms. **Thompson**. Yes.

Mr. **Anderson**. On both occasions, you were examined by—not by me, but by counsel for the respective defendants, weren't you?

Ms. **Thompson**. Yes.

Mr. **Anderson**. And on both occasions, the story you told today or the testimony you gave today is substantially the same as testimony you gave here, isn't it?

Ms. **Thompson**. Yes, as I recall.

Mr. **Anderson**. Now, let me, just to be sure we get the other side of Congressman Fish's questioning, when Judge Hastings called you to make arrangements for the dinner, did he tell you that you would not be joined by anyone?

Ms. **Thompson**. No, he did not.

Mr. **Anderson**. On the way over in the car, did he tell you that he would not be joined by anyone?

Ms. **Thompson**. No.

Mr. **Anderson**. When you went into the hotel dining room, did he tell you that you would not be joined by anyone?

Ms. **Thompson**. No.

Mr. **Anderson**. When you were looking in the other rooms on your way in, did he tell you he was not looking for anyone?

Ms. **Thompson**. No.

Mr. **Anderson**. While you were seated, did he tell you you were not looking for anyone?

Ms. **Thompson**. No.

Mr. **Anderson**. So, in point of fact, at the only time when the issue was discussed, was when Judge Hastings returned after his brief departure and said he had been looking for some friends from DC that he expected to join, expected to see, is that correct?

Ms. **Thompson**. That's correct.

Mr. **Anderson**. That's the only time over the two-day period that the topic of—that that topic was discussed?

Ms. **Thompson**. Yes.

Mr. **Anderson**. And that's the only statement he made on that topic, isn't it?

Ms. **Thompson**. Yes.

Mr. **Anderson**. Thank you.

The **Chairman**. Is there redirect examination, Representative Fish?

Mr. **Fish**. No, Mr. Chairman, no redirect.

The **Chairman**. Are there questions by members of the committee?

[No response.]

Is there any reason this witness cannot be excused at this time?

[No response.]

If not, we very much appreciate your testimony and you are excused as a witness. Thank you.

Will the House proceed to call its next witness, please?

Mr. **Bryant**. The House will call Wayne McDonald at this time, to be examined by Mr. Gekas.

The **Chairman**. Mr. McDonald, would you raise your right hand, please?

Do you, Wayne McDonald, swear and affirm that the evidence that you will give in the case now pending between the United

States and Judge Alcee L. Hastings shall be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. McDONALD. I do.

The CHAIRMAN. Please be seated.

Please proceed.

TESTIMONY OF WAYNE A. McDONALD

DIRECT EXAMINATION

Mr. GEKAS. Mr. Chairman and members of the committee.

Would you please state your full name?

Mr. McDONALD. Wayne A. McDonald.

Mr. GEKAS. And what is your employment?

Mr. McDONALD. I am a special agent with the Federal Bureau of Investigation.

Mr. GEKAS. How long have you been so employed?

Mr. McDONALD. Eighteen years.

Mr. GEKAS. In what vicinity are you presently employed?

Mr. McDONALD. I am assigned to the Miami division of the FBI.

Mr. GEKAS. How long have you been situated in that area?

Mr. McDONALD. Since June 1982.

Mr. GEKAS. So, we take it that in 1986 you were still working out of the Miami office, is that correct?

Mr. McDONALD. Yes, that's correct.

Mr. GEKAS. In that year, 1986, did you conduct any investigation in connection with the matters at hand?

Mr. McDONALD. Yes, I did.

Mr. GEKAS. Please tell the committee, after we show you House Exhibit 201, exactly what that assignment was. I am going to show you Exhibit 201 and ask you to identify it.

Mr. McDONALD. This is an FD-302 that I prepared on the 26th day of March 1986, which consists of FD-302 and a sketch that was attached to the back of it.

Mr. GEKAS. All right. What was the focus of the investigation that you conducted and which is reflected in House Exhibit 201?

Mr. McDONALD. I was asked to go to the Federal Courthouse, located in Miami at 300 N.E. First Avenue, and locate a particular pay telephone which was I found to be located on the third floor, in the southeast corner, and draw a sketch of that in relationship to where Judge Hastings' offices and chambers were located in 1981, prior to him moving to the new courthouse.

Mr. GEKAS. How were you to identify the telephone?

Mr. McDONALD. I had the telephone number and basically searched two or three phones in the building and found it to be located on the third floor.

Mr. GEKAS. What was the telephone number, according to your exhibit, your report, that you investigated?

Mr. McDONALD. OK. It was telephone number Area Code 305, 374-9650.

Mr. GEKAS. And you did then determine the location of that telephone?

Mr. McDONALD. Yes, I did, it was on the third floor.

Mr. **Gekas**. What other investigation did you conduct in conjunction with your entry into the courthouse structure at that time?

Mr. **McDonald**. Well, I located the old chambers of Judge Hastings and drew a sketch, indicating the distances from his chambers to that particular pay phone. His chambers were located on the third floor also, on the east corridor.

Mr. **Gekas**. Approximately how far away was the telephone from the chambers that Judge Hastings occupied, according to your investigation?

Mr. **McDonald**. Approximately 125 feet.

Mr. **Gekas**. Is the graph or map that you testified to attached to the 302 which you prepared, the investigation report, and which is now marked as House Exhibit 201?

Mr. **McDonald**. Yes, it is.

Mr. **Gekas**. Mr. Chairman and members of the committee, the House managers will wait until an appropriate time to offer this as an exhibit, because we have subpoenaed the records of Southern Bell to tie in all of this information, and as soon as we receive that, then we will have a full exhibit with which to offer it into evidence, so we will, with the chair's permission, withhold it for the time being.

Now, will the Clerk let me have Exhibit 31, please?

I show you what has been marked as Exhibit 31, and I ask you to please look at that exhibit with respect to the record for April 1981, which is marked House Exhibit 31I.

Mr. **Anderson**. Mr. Chairman, we will stipulate that they have the telephone numbers correct to the pay phone, as charged to Judge Hastings' telephone. I don't think that this witness can testify, unless he is the person who obtained the telephone records. He is simply reading Judge Hastings' phone bills, as far as I can tell now, and that seems to me not an appropriate use of a witness.

Mr. **Gekas**. Well, this is an exhibit that has been admitted and we are trying to get across to the committee the relevant information from it in connection with this agent's testimony and with the pattern of the entire case. It is in the stream of the presentation of the evidence that we wish to make to the committee, and so we——

The **Chairman**. The objection is overruled. Counsel can propound the question to the witness, if you have a question.

Mr. **Gekas**. Please tell us what the exhibit reflects with respect to the telephone that you uncovered on the third floor of the courthouse and attendant records thereto?

Mr. **McDonald**. OK. House Exhibit 31I indicates that this is a copy of the telephone bill, on two different locations on this bill the pay phone, (305) 374-9650 is listed on this bill.

Mr. **Gekas**. And what connection is made between the entry of the number that you just related to where the billing was?

Mr. **McDonald**. OK. The billing evidently went to Judge Hastings' home telephone, but there were two calls that were made to Washington, DC numbers. One was made—both of them were made on the 9th day of April—one was made at 12:14 p.m., to Area Code 202, 789-0108, and one minute later, at 2:15 p.m., a telephone call was made to Area Code 202, 789-9108, both from the same pay phone and both charged to Judge Hastings' home telephone.

Mr. **Gekas**. And the date of those two transactions, again, was?

Mr. **McDonald.** April 9th, and both telephone calls lasted for one minute.

Mr. **Gekas.** Mr. Chairman and members of the committee, we have no further questions of this witness.

The **Chairman.** Is there cross-examination of this witness?

Mr. **Anderson.** Briefly.

CROSS-EXAMINATION

Agent McDonald, good afternoon, my name is Terry Anderson.

Mr. **McDonald.** Yes, sir.

Mr. **Anderson.** The investigations you were conducting were investigations you were asked to undertake on behalf of the Investigating Committee of the Judicial Council of the Eleventh Circuit, were they not?

Mr. **McDonald.** Yes, sir.

Mr. **Anderson.** And in connection with those investigations, you were also asked to determine the location of the Miami and Fort Lauderdale Airports, were you not?

Mr. **McDonald.** Not myself, no, sir.

Mr. **Anderson.** You weren't the agent who——

Mr. **McDonald.** I did not do that, no.

Mr. **Anderson.** Do you know where the Miami International Airport is?

Mr. **McDonald.** Yes, sir.

Mr. **Anderson.** Do you know where the Fort Lauderdale Airport is?

Mr. **McDonald.** Yes, sir.

Mr. **Anderson.** There has been some, at least it has been brought out or will be that Judge Hastings, on October 9th, flew back to the Fort Lauderdale Airport. That would be closer for a person who lives in the Fort Lauderdale area to get home, wouldn't it?

Mr. **McDonald.** Yes, sir.

Mr. **Anderson.** And the Miami International Airport would be closer for a judge who was going to the airport from the Miami Federal Courthouse, wouldn't it?

Mr. **McDonald.** If you were going to the Federal Courthouse, the Miami Airport would be the closest.

Mr. **Anderson.** And if you were going to the home in Lauderhill to an invalid mother, the Fort Lauderdale Airport would be closer, wouldn't it?

Mr. **McDonald.** The Fort Lauderdale Airport is closer to Lauderhill, yes, sir.

Mr. **Anderson.** Thank you, Agent McDonald.

The **Chairman.** Is there any redirect examination of this witness?

Mr. **Gekas.** None, Mr. Chairman.

The **Chairman.** Are there any questions from committee members of this witness?

[No response.]

If not, is there any reason this witness cannot be excused?

[No response.]

Mr. McDonald, we appreciate your testimony very much, and you are excused.

Would the House please call its next witness?

Mr. BRYANT. At this time, Mr. Chairman, the House calls Dr. Roger Shuy.

ARGUMENT CONCERNING THE TESTIMONY OF ROGER W. SHUY

Mr. ANDERSON. Mr. Chairman, we would object on the grounds that we do not believe psycholinguistics has been recognized as a field of expertise. We recognize that you are being liberal with the rules of evidence, but there have been expressions of concern within the Senate in the *Williams* proceedings and elsewhere about the notion that an expert should be called simply to tell you what he heard.

The CHAIRMAN. This is a significant evidentiary issue I think for the committee. I believe the House managers and Judge Hastings' counsel would agree with that. I think what we will do at this point is to proceed and have the House express its argument as to why this witness should be allowed to testify, have Mr. Anderson express his objections to the testimony, and then I will call a short recess while the committee can deliberate on the question.

Would you go ahead and address the committee from the podium, Mr. Byrant?

Mr. BRYANT. Yes, Mr. Chairman.

The House wishes to call Dr. Roger Shuy to testify today regarding the recorded telephone conversation of October 5, 1981, between William A. Borders and Judge Alcee Hastings, a conversation which purported to be about letters for Hemp, and we will call him to express his expert opinion about whether or not this was a coded conversation, rather than a conversation about letters for Hemp.

Mr. Chairman, there are three very sound reasons why this committee should admit this testimony and should consider it today and give to it whatever weight you in your good judgment decide it deserves.

First, is that Senate precedent establishes the admissibility of Dr. Shuy's testimony. In an important prior proceeding, the Senate allowed into evidence the very type of testimony the House managers wish to submit in this impeachment case, and in fact the testimony involved Dr. Shuy himself.

The occasion arose in the Senate proceeding on whether to expel Senator Harrison Williams from office, a proceeding that had the same goal as the proceeding we are participating in today, which is whether a public official has conducted himself in a manner that requires removal from office.

In the Senate's proceeding on whether to expel Senator Williams, the full Senate admitted into evidence the linguistic testimony of Dr. Shuy. I would point out—Mr. Anderson used the term "psycholinguisatics," to our knowledge, this does not exist—Dr. Shuy is a noted linguist and is Chairman of the Department of Linguistics at Georgetown University.

His testimony in the *Williams* case analyzed the videotape recordings at issue in that case, and the citation to the record is 128, Congressional Record 3315, March 4, 1982. Dr. Shuy's testimony involved conversation and discourse analysis, the very type of analysis that is the subject of his testimony in this proceeding, and it was submitted on behalf of, that is, in favor of Senator Williams. Because testimony was being given on the Senate floor, Dr. Shuy's testimony was read by the Clerk out loud, and Dr. Shuy was present on the floor during the reading.

When Dr. Shuy's testimony was introduced in the *Williams* expulsion case, there was no debate on its admissibility. The only debate was on the weight that was to be given that testimony. That same debate should take place in this case when the Senate is in closed session, deliberating on the 17 articles of impeachment, and like the full Senate did in the *Williams* case, the testimony should be admitted and become part of the record for each Senator to review and weigh as each Senator sees fit, and we believe the Senate should have before it all the relevant evidence in order to make the most informed judgment possible.

The second reason why Dr. Shuy should be allowed to testify is that, to the best of our knowledge, expert testimony on conversation analysis is more often accepted into evidence than excluded by the courts, and the Senate should follow what we believe to be the most predominant judicial practice.

I will proffer to this committee that, if called as a witness, Dr. Shuy will testify that his expert testimony has been admitted into 22 cases, it has been excluded by the court in approximately four instances, and he will also testify that, to the best of his knowledge, he has testified in far more court cases than any other linguist in the country, and therefore we believe that his record of having his testimony admitted four times as often as it is excluded by both Federal and State courts and both criminal and civil cases is ample justification for allowing his testimony into the record in this proceeding, consistent with the Senate's past practice and in order to let each Senator give weight to it as he sees fit or as she sees fit.

The House managers do recognize that, in the reported case law in the law library, in the reported case law, linguistic testimony such as the House offers here has been excluded. We think it is important to emphasize that those reported cases are not an indication that such expert testimony is disfavored. Most often, linguistic analysis of tape recordings is offered by the defendant in a criminal case. If such testimony is allowed in the case and the defendant is acquitted, there is no appeal and therefore there is no court opinion that addresses the admission of that evidence.

Also, if the expert testimony is accepted by the trial court and the defendant is convicted, the defendant has no reason to raise the issue in his appeal because the trial judge ruled in his favor. Again, the appellate court does not have a case before it when the trial judge admitted the testimony into evidence, which has been the case in the overwhelming majority of cases in which Dr. Shuy has been called as a witness.

Most often, the way in which the admissibility of linguistic expert testimony arises in the reported cases is when the testimony was originally excluded by the trial judge. The defendant was then convicted and the exclusion of the linguistic analysis is raised on appeal. In these instances, the trial court's original ruling most often stands. The appeal court applies a very deferential standard of review, that is, did the trial court abuse its discretion by excluding the linguistic testimony, and the answer often is no, there was no abuse of discretion. These are the cases in which there is an opinion.

As Dr. Shuy's history of testifying illustrates, they do not illustrate that expert testimony in the field of linguistics is disfavored by the courts.

Finally, I would like to emphasize that Dr. Shuy's testimony rests upon scientific linguistic analysis, which clarifies the meaning and structure of a conversation which will aid this committee and the Senate when it must deliberate in this case. Conversation analysis is a well-established branch of linguistics, and linguistic analysis of taped conversations is quite common.

What linguistics refer to in their analysis is not always accessible to an untrained listener. What a linguistic can see in a conversation is similar to what a doctor can see in an X-ray—everyone can recognize what an X-ray is, but it is not the same as understanding what the X-ray reveals, and the same is true with respect to linguistic analysis.

You and I can follow a conversation, but a linguistic can analyze the words and structure of that conversation in order to better interpret its meaning. We submit to you that, for the reasons stated, the committee should allow the testimony of Dr. Shuy in this proceeding and allow each Senator then to determine what weight that testimony should be given.

Senator RUDMAN. Mr. Chairman?

The CHAIRMAN. Senator Rudman, would you like to make a statement?

Senator RUDMAN. Not a statement, I would like to ask the House manager a question.

The CHAIRMAN. Go right ahead.

Senator RUDMAN. Congressman Bryant, I would like to ask you this question: Are you proposing to have Dr. Shuy testify that this was a coded conversation? As a proffer, is that one of the things he will testify to?

Mr. BRYANT. That's correct.

Senator RUDMAN. Now, will he then proceed to decode the conversation, is that part of his testimony?

Mr. BRYANT. He will proceed to explain to you how he arrived at his decision, based upon objective indices or indicators of the existence of a coded conversation and based upon three different types of analysis.

Senator RUDMAN. Well, I understand that, so he——

Mr. BRYANT. I would say, Senator, he is not going to tell you what the conversation means. He is not going to try to tell you this conversation means something specific.

Senator RUDMAN. Well, that's really my question. If he is allowed to testify, he would testify that he thought the conversation was coded, and then you will lead him through questions as to his art, his science, how he reaches that.

Mr. BRYANT. Correct.

Senator **Rudman**. But I take it that he is not going to testify as to what the conversation meant, other than that it was coded, is that what you are telling us?

Mr. **Bryant**. He will not say this conversation didn't mean this, it didn't mean this, he's not going to testify to that. He will testify that the conversation in his opinion does not mean what it purports to mean, and in fact was a coded conversation.

Senator **Rudman**. We can probably use him for looking at the Congressional Record every day, he could probably tell us——

[Laughter.]

Mr. **Bryant**. I don't know if we want him here or not for those purposes, Senator.

The **Chairman**. Are there other questions of counsel before we hear from Mr. Anderson?

[No response.]

Mr. Anderson, would you please come to the podium and indicate to the committee the objection that you have to Dr. Shuy?

Mr. **Anderson**. Mr. Chairman, although I am happy to develop the point now, I would note that I am taken a bit aback. I had understood from Mr. Miller this morning that he had been excused by the House managers, returned to Miami and come back here, and I really had not anticipated that we would be confronting the Shuy issue today.

Apart from that, let me develop my points, because I think they are largely a matter of common sense. In the first place, yes, I gather the Senate, although Dr. Shuy himself subsequently disputed the extent to which they really received his testimony, I gather it was received without objection.

Second, in the Senate, as I recall it, Senator Williams had been convicted, the ethics decision was being made, it was admitted on behalf of the respondent, for such weight as the Senate chose to give it, which I take it was not very much.

My concern here is that the appellate decisions, the reported decisions that address this case have excluded it. This is not only, I think, a very new, if it is a science at all, whether it is witchcraft or science is open to question, but it goes directly to invade the domain of what we are talking about, the assessment of the ordinary meaning of conversation, a matter that we have committed throughout history, civil and criminal, to juries.

Now, you have in this case another in a series, at least potentially another in a series of firsts. The full Senate will not necessarily hear this conversation. As things now stand, given the Chair's ruling this morning, it will be Dr. Shuy's transcript that they will read, for those who read it. Then, if Dr. Shuy were permitted to testify, we will embellish Dr. Shuy's interpretation, and some point beyond any recognition of what would happen in a judicial proceeding, it will become Dr. Shuy on what this conversation was, argued on a paper record to a group of Senators who may never have heard it.

Those of you who heard that conversation when it was played through Agent Murphy, it was 27 seconds long and I think, when you first heard it, unless you were looking for it, it struck you, as it still does me, as fairly innocuous. If you contrast that conversation with the "uh's" in there, which are almost undetectable, but can be magnified and brought out, with the conversation between H. Paul Rico and William Borders, where are lots of "uh, uh, uh, uh," and pauses between them, someone struggling for a word.

Now, on the printed transcript which has been laying out there, the "uh-uh" that goes by in a second and can be barely detected by the human ear occupies the same space on a printed transcript that an "uh, uh, what was that decision I was trying to, uh," where you have long pauses. When you print it out, it's "uh, uh," and it is not "uh-uh."

I just think not only has this not been recognized in the courts to the extent that it has been addressed on appeal, not only do I think it is inappropriate here, but I think it is especially inappropriate, because this committee is trying to construct a record that will enable the Senators to fairly assess the quality of the evidence.

I have made, as I have made and probably will continue to make, somewhat to your irritation, objections about our departures from practice and precedent. You now have a proceeding where the best available evidence may not be heard, and we are now about to get an expert, not merely to invade the domain of a jury that heard the evidence, but to control the domain or insert, intrude between the jury who may not have heard the view of someone on a topic which most of us have grown up thinking that we can understand conversation without the help of an expert.

Mr. Weingarten, I would proffer to you when the time gets here, you will find was fairly sophisticated at arguing that this conversation was code, the extent to which it was code, by a concerned ethical judge who was struggling with the notion of whether it was appropriate to write letters for a friend and about that, or whether it was a sophisticated code that had been developed, when I don't know, but it seems to me that is a question of fact. It seems to me the Senators ought to approach that with a clear mind. I would hope some of the Senators would be curious enough to want to hear at least that one tape, if no others, and I don't think they should rely on the linguistics field.

There are cases that simply exclude. I think it is so improper for you to open still another first door in this case of impeachment. I do not think Dr. Shuy should be permitted to testify. If he is, however, I trust he will come prepared to be at least cross-examined on all of the conversations for which he has prepared transcripts which appear in this record, because I think I will be able, through Dr. Shuy, to bring some of his expertise to bear on conversations between Mr. Rico and Mr. Borders and other conversations that may be useful.

I would suggest that you, both in the interest of time and fairness and maintaining a consistency with the American system of justice, the trier of facts should listen to it. To date, most of us don't think we need to be advised on what we heard. This is not a case in which to make still another first precedent.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Let me just be very specific here. Senator Rudman asked House counsel about the purpose for which Mr. Shuy would be called as a witness, and let's be as precise as we can as to that purpose. If you could restate that once more for the committee, because that is what we would be ruling on, is the permissibility of allowing Dr. Shuy to testify for that limited purpose.

Mr. **Bryant**. Mr. Chairman, he will be testifying with regard to a conversation that took place at a critical stage and I won't take the committee's time to characterize "critical stage," but it is extremely important what that conversation is.

He will testify regarding the recorded telephone conversation of October 5, 1981, between William A. Borders and Judge Hastings, which purportedly is about something referred to as "letters for Hemp," Hemp being a person, and he will express his expert opinion about whether or not this was a coded conversation, instead of a conversation about letters for Hemp. His testimony will, therefore, aid the Senate in determining what the conversation meant in the scheme of things here.

Now, I would point out to you that any doubts that can be raised about the validity of the science or the usefulness of it or the lack of weight can be raised in cross-examination, and each Senator at that time would be able to make a decision on the value of that evidence.

The **Chairman**. He is not being called to authenticate transcripts or for other purposes?

Mr. **Bryant**. He will be called for that purpose, but that is not why we wish to call him at this time. That is incidental.

The **Chairman**. If he were permitted to come forward at this time, he would be here for all purposes, we would not wish to have him called back next week for another purpose.

Mr. **Bryant**. Well, that raises a—let me emphasize that we wish to bring him forward today for purposes of talking about the October 5th conversation. We want to bring him forward with regard to the transcripts, but we were taken by surprise on the transcript issue, which is totally unrelated, I should emphasize, to the October 5th conversation that we are talking about here.

Because of the fact that the order of Monday of this week indicated to us that the transcript were, for all purposes but relevancy, accepted, we will not be able to present his testimony today regarding those transcripts, because he is going to have to stop and examine some documents in order to present testimony that is now being called forth. We thought this issue was settled on Monday, when the Chair signed the order regarding those transcripts.

The **Chairman**. Do you have anything else to add before we recess to consider this?

Mr. **Anderson**. Only to emphasize that I would urge the committee not to open this door. But if it opens it, I would hope that when Dr. Shuy comes back to testify, he is prepared to testify on all of the tapes, as to their content and their conversational and various structure of analysis of conversations for which he is prepared the transcripts upon which this Senate will rely, because I do expect my cross-examination to extend into those tapes very heavily.

Thank you, Mr. Chairman.

The **Chairman**. Any other questions by the committee?

[No response.]

If not, we will recess for about 10 to 15 minutes and return with a decision on this.

[Short recess.]

The CHAIRMAN. The committee will reconvene.

First of all, as to our schedule this afternoon, the committee members are able to remain here until 4:30, instead of 5:30, because of travel plans and obligations, therefore we will plan to recess at 4:30, rather than 5:30 this afternoon.

The committee decision on Dr. Shuy's testimony is that he will be permitted to testify for the purpose that the House has indicated it wishes to call him, and that is as to the fact that the conversation is or is not coded, but not as to the substance, the meaning of the conversation.

The House can proceed to call the witness.

Mr. BRYANT. The House calls Dr. Roger Shuy.

The CHAIRMAN. Would you raise your right hand, please?

Do you, Roger Shuy, swear and affirm that the evidence you shall give in the case now pending between the United States and Judge Alcee L. Hastings shall be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. SHUY. I do.

The CHAIRMAN. Please be seated.

Mr. SHUY. Thank you.

TESTIMONY OF ROGER W. SHUY

DIRECT EXAMINATION

Mr. BRYANT. Would you please state your name?

Mr. SHUY. Yes, my name is Roger W. Shuy.

Mr. BRYANT. And Dr. Shuy, what is your occupation?

Mr. SHUY. I am professor of linguistics and chairman of the Linguistics Department at Georgetown University, here in Washington.

Mr. BRYANT. And how long have you been a professor of linguistics at Georgetown?

Mr. SHUY. Twenty years.

Mr. BRYANT. Could you please state for the committee your educational background?

Mr. SHUY. Yes, I hold the Ph.D. degree from Case Western Reserve University, the masters degree from Kent State University, and a bachelors degree from Wheaton College in Illinois.

Mr. BRYANT. And in what subject did you receive your Ph.D.?

Mr. SHUY. In English and Linguistics.

Mr. BRYANT. And your M.A.?

Mr. SHUY. In English.

Mr. BRYANT. And your A.B.?

Mr. SHUY. In English.

Mr. BRYANT. Could you also briefly highlight your publications in the field of linguistics?

Mr. SHUY. Yes, I've published by authorizing, coauthoring, editing or co-editing some 24 books in the field of applied linguistics and socio-linguistics and in various aspects of education and linguistics, and I have authored over 125 articles in various learned journals in the field.

Mr. BRYANT. Dr. Shuy, is one of your current areas of study in the linguistics field known as conversation analysis?

Mr. SHUY. Yes, it is.

Mr. **Bryant**. Is conversation analysis a specialty within the area of linguistics?

Mr. **Shuy**. Yes, it is.

Mr. **Bryant**. Please briefly explain to the committee the focus of conversation analysis.

Mr. **Shuy**. Conversation analysis is, obviously, an analysis of conversation, that is, it analyzes the structure of conversation to determine such things as turn-taking procedures, introductions of topics, recycling of topics, interruptions, pauses, and responses to topics introduced by others, and many other things.

Mr. **Bryant**. Have you published articles in this specific area of linguistics?

Mr. **Shuy**. Yes, I have.

Mr. **Bryant**. Are there courses taught in conversation analysis at Georgetown University?

Mr. **Shuy**. Yes, there are.

Mr. **Bryant**. And does conversation analysis include studying conversations to determine whether or not they are in code?

Mr. **Shuy**. Yes, it does.

Mr. **Bryant**. To conduct such a study, do you analyze tape recordings used in criminal and civil trials?

Mr. **Shuy**. I do.

Mr. **Bryant**. In the course of your study of conversations, including the study of the use of codes, how many tape recordings have you reviewed?

Mr. **Shuy**. I would estimate over 3,000 hours of tape recorded conversation, possibly as many as 4,000.

Mr. **Bryant**. Are these recordings often gathered by the FBI or by other law enforcement agencies?

Mr. **Shuy**. Yes, they are.

Mr. **Bryant**. And have you previously testified in court as an expert witness?

Mr. **Shuy**. Yes, I have.

Mr. **Bryant**. In how many Federal court cases have you testified?

Mr. **Shuy**. Fourteen.

Mr. **Bryant**. And in how many State court cases have you testified?

Mr. **Shuy**. Eight.

Mr. **Bryant**. In these cases, has your expert testimony focused on conversation analysis?

Mr. **Shuy**. Yes, it has.

Mr. **Bryant**. Dr. Shuy, in how many cases has your testimony been excluded from evidence?

Mr. **Shuy**. I don't——

Mr. **Anderson**. Mr. Chairman, that's irrelevant. You ruled what is going to come in here. If he wants to relitigate the issue, I will be delighted to have another go at it.

The **Chairman**. The objection is overruled. This goes to the weight the committee wishes to give to the witness' testimony.

You can proceed.

Mr. **Bryant**. In how many cases has your testimony been excluded from evidence?

Mr. **Shuy**. I would estimate three or four times.

Mr. **Bryant**. Now, when your testimony has been admitted into evidence, has that testimony focused on conversation analysis and, in particular, employed speech act, syntax and discourse analysis?

Mr. **Shuy**. Yes, it has.

Mr. **Bryant**. Are these types of analyses standard analytical procedures of the linguistic field?

Mr. **Shuy**. Yes, they are.

Mr. **Bryant**. Dr. Shuy, approximately how many linguists are there in the United States who study conversation analysis?

Mr. **Shuy**. Again, I would have to estimate, but I would estimate 400 or 500, at least.

Mr. **Bryant**. In the Federal and State court cases in which you have been involved, has your consultation and testimony been primarily for the prosecution or for the defense?

Mr. **Shuy**. For the defense.

Mr. **Bryant**. And have you previously testified before the Senate?

Mr. **Shuy**. Yes, I have.

Mr. **Bryant**. That is, the United States?

Mr. **Shuy**. Yes, sir.

Mr. **Bryant**. And in what proceeding?

Mr. **Shuy**. That was in the expulsion hearings of Senator Harrison A. Williams.

Mr. **Bryant**. And in that case, did your testimony involve conversation analysis?

Mr. **Shuy**. Yes, it did.

Mr. **Bryant**. And did your testimony in the *Williams* case involve analysis of a conversation recorded by the FBI?

Mr. **Shuy**. Yes.

Mr. **Bryant**. Dr. Shuy, let me hand you what is marked as House Exhibit 122 and ask you if you could please identify that exhibit for the committee?

Mr. **Shuy**. Yes, this is my curriculum vitae, revised in January of 1989. I revise it every year, in January.

Mr. **Bryant**. Mr. Chairman, I move House Exhibit 122 into evidence, based on the responses to the foregoing questions, and move that Dr. Shuy be accepted as an expert witness in the field of linguistics and, in particular, the area of conversation analysis.

The **Chairman**. Is there objection to the exhibit?

Mr. **Anderson**. No, Mr. Chairman.

The **Chairman**. The exhibit will be admitted.

[The document referred to was marked House Exhibit No. 122 and was received in evidence.]

Mr. **Bryant**. Dr. Shuy, could you please state to the committee the assignment you received from the House of Representatives in this case?

Mr. **Shuy**. Yes, the assignment was to listen to and analyze the tape recordings given me, and particularly ones involving Judge Hastings.

Mr. **Bryant**. All right. And what determination were you asked to make?

Mr. **Shuy**. I was asked to determine whether or not there was code used in the October 5th conversation between Judge Hastings and Mr. Borders.

Mr. **Bryant**. Now, when you were asked to analyze the October 5, 1981 conversation between Judge Hastings and Mr. Borders, did any member of the House of Representatives or any member of the House Impeachment staff identify portions of that conversation which were possibly a code?

Mr. **Shuy**. No, they did not.

Mr. **Bryant**. And in connection with your analysis of the October 5, 1981 conversation, what materials did you review?

Mr. **Shuy**. I reviewed the transcript, the Government transcript of the October 5th conversation, along with the tape of that conversation, as well as another conversation on October 8th, between Judge Hastings and Mr. Borders, and 10 other tapes involving Mr. Borders and Mr. Dredge and a Mr. Rico. In addition, I was given pages 2173 through 2192 of Judge Hastings' testimony.

Mr. **Bryant**. Let me draw your attention to the large charts that are beside you to your right, which have been marked Exhibits 123 and 124. One is back against the wall and one is right next to you.

Mr. **Shuy**. Yes.

Mr. **Bryant**. And also let me hand you the reduced forms of Exhibits 123 and 124.

Mr. Chairman, I would observe that the smaller versions of these exhibits are in the exhibit books of each member.

Dr. Shuy, are Exhibits 123 and 124 accurate transcripts of the October 5th and the October 8th conversations between Judge Hastings and Mr. Borders?

Mr. **Shuy**. To my knowledge, they are, yes.

Mr. **Bryant**. And with respect to the portion of Judge Hastings' trial testimony that you reviewed, what was the subject matter of that testimony?

Mr. **Shuy**. It had to do with Judge Hastings' understandings of meanings of certain words on those tapes.

Mr. **Bryant**. On which conversation?

Mr. **Shuy**. On the October 5th conversation.

Mr. **Bryant**. All right. And did the audio quality of the tape recording in any way affect your ability to review and analyze those recordings?

Mr. **Shuy**. No, the audio quality was certainly not the worst I've ever heard. I have had many worse tapes I've had to analyze.

Mr. **Bryant**. Fine. And did the size of the sample of tape recordings provided, in particular the fact that there were only two tape recordings of conversations between Judge Hastings and Mr. Borders available, affect your analysis in any way?

Mr. **Shuy**. No, the features that occur on those tapes were adequate for the analysis that was performed.

Mr. **Bryant**. What type of equipment do you use to listen to tape recordings in conjunction with your linguistic analysis?

Mr. **Shuy**. I use a Bang & Olufsen Beocord, I have three of them, 9000 is one model and 8004 is another model, with Nakamichi earphones.

Mr. **Bryant**. And with the equipment that you use, were you in fact able to make corrections to the previously prepared transcripts of the tape recordings provided to you by the House?

Mr. **Shuy**. Yes, I was.

Mr. BRYANT. In addition, Dr. Shuy, were you consulted by either party in Judge Hastings' criminal case, Mr. Borders' criminal case, or by the Eleventh Circuit Investigating Committee?

Mr. SHUY. No, I was not.

Mr. BRYANT. Did you testify before the House Subcommittee on Criminal Justice when it investigated the charges against Judge Hastings?

Mr. SHUY. That is the House of Representatives Committee?

Mr. BRYANT. Yes.

Mr. SHUY. Yes, I did.

Mr. BRYANT. And what was the extent of your knowledge of the facts and circumstances of this case prior to being contacted by the House of Representatives?

Mr. SHUY. Only what I had heard on television or read in the newspaper, probably just read in the newspaper.

Mr. BRYANT. All right. Were you familiar in any way with the October 5, 1981 conversation between Judge Hastings and Mr. Borders prior to being contacted by the House of Representatives?

Mr. SHUY. No, I was not.

Mr. BRYANT. Dr. Shuy, based on your review of the materials provided you by the House, specifically the October 5th tape recording itself, the 11 other tape recordings which were gathered by the FBI as part of the investigation of this case, and the portion of Judge Hastings' trial testimony which you reviewed, did you reach an opinion regarding the use of a code in the October 5, 1981 conversation?

Mr. SHUY. Yes, I did.

Mr. BRYANT. And what is that opinion?

Mr. SHUY. That code was used in the October 5th conversation.

Mr. BRYANT. In your opinion, is the October 5, 1981 conversation about letters for Hemphill Pride?

Mr. ANDERSON. Objection. I thought the ruling of the Chair was he could testify it was code on the basis by which he arrived at that conclusion, he could not give you testimony as to the content or meaning of that conversation. That is how I understood the Chair to rule and that is my objection.

Mr. BRYANT. Mr. Chairman, I have not offered it to prove what the content of it is. I am simply asking the question, is the content of it what it purports to be.

Mr. ANDERSON. May I respond, Mr. Chairman? He has offered it to prove what it is not. That is going to content, that is not going to code.

The CHAIRMAN. The objection will be sustained. If counsel wishes to ask the witness whether in fact the conversation means what on its face it would appear to mean, I think that's a reasonable line of questioning.

Mr. BRYANT. Let me ask this question, then: In your opinion, is the October 5th conversation a coded conversation?

Mr. SHUY. Yes.

Mr. BRYANT. In your opinion, is the October 5th conversation about the subject which it purports to be about on its face?

Mr. SHUY. No, it is not.

Mr. BRYANT. In your opinion, Dr. Shuy, what type of code is being used by Judge Hastings and Mr. Borders in the October 5th conversation?

Mr. SHUY. A hastily-constructed partial word code.

Mr. BRYANT. I would like to now ask you to explain the basis of your opinion to the members of the committee. First, would you highlight for the committee what this conversation is about, if you take the conversation at face value?

Mr. SHUY. I assume you refer to the October 5th conversation?

Mr. BRYANT. That's right.

Mr. ANDERSON. This is again content-based testimony, is it not, what the conversation is about?

Mr. BRYANT. Mr. Chairman, we are asking him to highlight what the conversation about on its face, that is, not any hidden meaning, not any coded meaning, just to start the testimony by highlighting what the conversation is about on its face, as a way to enter the analysis.

The CHAIRMAN. The witness will be able to testify to what is obviously on the face of the conversation.

Mr. BRYANT. Now, turning to the October 5th conversation, would you highlight for the committee what this conversation is about, if you take it at face value?

Mr. SHUY. All right. I will refer to the numbered segments for reference purposes as turns, since they are turns of talk.

On Turn 11, Judge Hastings notes that he's drafted letters for Hemp, and on Turn 13, Judge Hastings notes that he was concerned whether he, Borders, heard from him, Hemp, after they talked, and on Turn 18, Mr. Borders notes that he wrote some things down, that he, Hemp, wrote some things down for me, Borders, and on Turn 20, Mr. Borders says that he, Borders, was supposed to go back and get some more things, and on Turn 21, Judge Hastings indicates that he understands and says there's no big problem and that he will communicate with him, Hemp, and send the stuff off to Columbia in the morning.

Mr. BRYANT. Now, starting with that basic laying out of the conversation, I will ask you this: When analyzing conversations such as this to determine whether a code exists, how many types of analysis do you employ?

Mr. SHUY. Three.

Mr. BRYANT. Did you employ all three analyses in your study of the October 5th conversation?

Mr. SHUY. Yes.

Mr. BRYANT. What are the three types of linguistic analyses?

Mr. SHUY. The three types are speech act analysis, discourse analysis, and syntax analysis.

Mr. BRYANT. Tell us first what is the focus of speech act analysis?

Mr. SHUY. Speech act analysis is an analytical procedure that determines the meanings of words in context, that is, people use language to get things done, and speech acts are ways of determining that.

Mr. BRYANT. And what is the focus of syntax analysis?

Mr. SHUY. Syntax analysis determines whether the sentences used in a conversation comply with the normal norms of English syntax, how they vary, or if they are aberrant or not.

Mr. BRYANT. And what is the focus of discourse analysis in studying a conversation to determine if it is a code?

Mr. SHUY. Discourse analysis is the study of the structure of units of language larger than sentences, in other words, discourse means beyond the sentence. The structures of such units are such structures that enable us to determine whether patterns of discourse following normal principles of English use are followed.

Mr. BRYANT. Now, you stated that you employed all three types of analyses when studying the October 5th conversation. Did you also use the same analyses when studying the other 11 tape recordings provided to you by the House?

Mr. SHUY. Yes, I did.

Mr. BRYANT. What purpose did the other 11 tape recordings serve you in the course of your analyses?

Mr. SHUY. They were used as a basis of comparison with the October 5th conversation.

Mr. BRYANT. All right. Did they also serve as examples?

Mr. SHUY. Yes, and as examples usually for comparative purposes, however.

Mr. BRYANT. Now, by using speech act, syntax and discourse analysis, are you able to identify particular characteristics associated with coded conversations?

Mr. SHUY. Yes.

Mr. BRYANT. Is there any one characteristic of speech that all alone indicates a code is being used?

Mr. SHUY. No, there would be a clustering of linguistic features that would lead us to indicate that code is being used, but an individual feature by itself would not do that.

Mr. BRYANT. Well, did you find these characteristics, these clusterings associated with the October 5th conversation between Judge Hastings and William Borders?

Mr. SHUY. Yes.

Mr. BRYANT. Were these groupings of characteristics found in the October 8th conversation provided to you by the House, which is also between Judge Hastings and Mr. Borders?

Mr. SHUY. No, they were not.

Mr. BRYANT. What is one of the characteristics associated with coded conversations?

Mr. SHUY. Well, one of them is a combination of features, pause fillers, repeated words, and false starts that people use in sentences.

Mr. BRYANT. Now, why do pause fillers, repeated words and false starts indicate that the participants in a conversation may be using a code?

Mr. SHUY. Well, they indicate that the person in the conversation is being very careful about the word that is being selected to follow them.

Mr. BRYANT. OK. Let's turn to the October 5th conversation between Judge Hastings and Borders. Where do you find these characteristics?

Mr. **Shuy**. All right. Again, I will refer to the turns. Turn 11, for example, Judge Hastings says, "drafted those ah, ah, letters, ah, for Hemp," and these are pause fillers. Pause fillers are noises we make to fill pauses, to keep the floor as we talk.

And again on Turn 18, Mr. Borders says, "See, I had, I talked to him," that is a false start, he starts the sentence one way, turns around and goes another, and continuing in Turn 18, Mr. Borders says, "he, he wrote some things down," that's obviously a repeated word.

In Turn 21, Judge Hastings says, "I'll, I'll see to it," obviously repeating words, "that, ah," "that" is a pause filler, "I communicate with him," and I believe those are the major ones in the——

Mr. **Bryant**. Do both Judge Hastings and William Borders use pause fillers, repeat words and false starts in this conversation?

Mr. **Shuy**. Yes, they do.

Mr. **Bryant**. And what about the October 8th conversation between Judge Hastings and William Borders, which took place 3 days later, how does it compare with respect to the same characteristics?

Mr. **Shuy**. Well, there is one false start and one repeated phrase in the October 8th conversation. Here in Turn 13, in the October 8th conversation, Mr. Borders says, "Wait a minute, let me, give me," he has a false start, changes his sentence direction, and again in Turn 22, Judge Hastings says, "if you, if you," repeating his words.

But in the October 5th, there are nine such occasions, and in the October 8th only two, even though the October 5th conversation is only half as long in time, of duration, of seconds, as the October 8th conversation.

Mr. **Bryant**. Now, Dr. Shuy, does the repeated words and the pause fillers and the false starts alone tell you this is a coded conversation?

Mr. **Shuy**. No.

Mr. **Bryant**. What in addition signifies the presence of a code?

Mr. **Shuy**. Well, another feature is the presence of the topic word, the significant word that follows either the pause filler or the repeated word or the false start. For example, in Turn 11 of the—I am not on the October 5th conversation—in Turn 11, Judge Hastings says he's "drafted all those ah, ah," and the word following, syntactically, "letters," is the significant or topic word in that sentence, and then again, "ah, for Hemp," again the topic word in that sentence.

Mr. **Bryant**. So, the presence of pause fillers, false starts and repeated words near the significant words in the conversation help to signify the use of a code, is that what you are saying?

Mr. **Anderson**. Mr. Chairman, again, that is a highly leading question, "near the significant word," and it moves us right into content-based analysis. We are now getting to relating this to the content, will identify the significant words for you, that is content.

Mr. **Bryant**. Mr. Chairman——

The **Chairman**. The objection is sustained to the extent that it is an objection on the basis that the question was leading. If you could rephrase the question to allow the witness himself to testify, it will be permitted.

Mr. BRYANT. I was simply setting up the next question, Mr. Chairman, with words he had testified to.

Let me just ask you once again, what the connection is between significant words and these other indicators, false fillers, false starts, and so forth? What is the importance of the juxtaposition of those two indicators?

Mr. SHUY. Well, the position is the important indicator here, because the pause fillers, the repeated words and the false starts occur before nouns and verbs, syntactically important words in a sentence, indicating that they are carefully, being carefully selected by the speaker.

Mr. BRYANT. All right. So, this characteristic is significant for what reason?

Mr. SHUY. I'm sorry, which characteristic now?

Mr. BRYANT. The characteristic you just testified to, that is, the juxtaposition of significant words and the other particular types of linguistic elements.

Mr. SHUY. It's significant, because it indicates that care was taken, extreme care was being taken by the speaker to find the exact word that he wanted, and the evidence of that is the pause filler preceding it or the repeated word or the false start.

Mr. BRYANT. Do you find that this added characteristics, that is, the juxtaposition that I just referred to, is present in the October 5th conversation between Judge Hastings and William Borders?

Mr. SHUY. Yes, it is.

Mr. BRYANT. Could you highlight to the committee where this occurs?

Mr. SHUY. Yes, I will. On Turn 11, we have—I think I have already used this as an example—I've drafted all those "ah, ah, letters," the pause fillers precede the topic word "letters" in that sentence, "ah, for Hemp," again the topic word "Hemp" is preceded by "ah."

Turn 13, Judge Hastings says, "The only thing I was concerned with was, did you hear if, ah, you hear from him after we talked?" Here we have a pause filler "ah" and a changed direction or false start as well, and the topic word of the sentence is "hear from him" at this point, so these precede the topic word.

Again, in Turn 18, Mr. Borders this time says, "I had, I talked to him," which is a false start, he starts the sentence one way and turns and goes another, and continuing, "he, he," repeated words before the topic word "wrote some things down."

And again in Turn 21——

The CHAIRMAN. Let me just interrupt at this point. Could we take a very short recess? We do not have an adequate number of Senators present right now. I believe there are some very nearby, but we will just take a short recess until we can get another Senator or two here.

[Short recess.]

The CHAIRMAN. We will reconvene.

Go ahead and proceed with your questions, counsel.

Mr. BRYANT. Dr. Shuy, you just testified about repeated words, pause fillers and false starts near significant words in conversation. What is another characteristic of coded conversations?

Mr. SHUY. Another characteristic is logical inconsistency.

Mr. **Bryant**. Would you explain what you mean by that?

Mr. **Shuy**. Yes. Whereas, structurally, syntactically and in terms of discourse, the pause fillers, repeated words and false starts indicate by syntactic position the topic words in a sentence and connect with them. Now, the test of whether or not this is code comes from whether or not the conversation is logically consistent, either at face value or when some other coded meaning is interpreted for them.

And so one examines, when one does this kind of work, examines the text for its logical inconsistency or, if you will, logical inconsistency.

Mr. **Bryant**. Where, in the October 5th conversation, are there logical inconsistencies?

Mr. **Shuy**. Well, I believe that it would be best, again, to refer to the text of the October 5th conversation. For example, beginning at Turn 18, Mr. Borders indicates that "he wrote"—he, Hemp—"wrote some things down for me," meaning Borders, Judge Hastings says, "I understand," Mr. Borders says, "And then I was supposed to go back and get some more things."

Now, one examines a sentence like this and feels that there is something strange about that sentence. Linguists have reasons for why you might feel that.

Mr. **Anderson**. Mr. Chairman, I would object and would ask—I mean the testimony is "one examines a sentence like this and feels that there is something strange about that," I do not know Dr. Shuy's feelings about it. I don't share them. If there is an expert basis in some form of logical structure analysis or something that will tell us this is a strange sentence, perhaps, but I don't share his feelings and I don't think that is——

The **Chairman**. The objection will be overruled. The witness can go ahead and complete his answer.

Mr. **Shuy**. If one feels there is something strange about it, I think the linguistic analysis can give one an answer to it.

Now, writing some things down is a perfectly fine syntactic construction. ". . . then I was supposed to go back and get some more things," here we find by referencing rules, which linguists refer to as anaphora, but it's referencing of one, for example, a pronoun to an antecedent or what we call a dummy word for a preceding reference word, dummy in the sense meaning a fill-in, things we use regularly for words of that sort.

Now, once you say you "wrote some things down," that would be at face value some ideas that you have written down, then "go back and get some more things" does not ring true, according to the rules of English syntax, you don't get more ideas and refer to them as "things." It would be required that you refer to them as whatever their original reference was, such as "ideas."

So, when Mr. Border says he "was supposed to go back and get some more things," it gives an odd appearance to the syntax of that sentence, "things" being used in that way.

Mr. **Bryant**. Is there another example?

Mr. **Shuy**. Oh, yes, I was going on. I'm sorry, I was getting a drink. Yes, Judge Hastings continues, "Alright. I understand. Well, then, there's no great big problem at all. I'll see to it that, ah, I communicate with him. I'll send the stuff off to Columbia in the morning."

Now, this is where the logical inconsistency part comes in, because here we had Mr. Borders saying he talked to him, and Hemp wrote some things down for him, and then he, Borders, was supposed to go back and get some more things, and at this point Judge Hastings says, "Well . . . there's no great big problem at all"—"Well, then, there's no great big problem at all." This is a causal connector, then, that says essentially "this being the case, then" or "for this reason" or "therefore"——

Mr. ANDERSON. I don't mean to persist in objection. I apparently do not understand the chair's ruling. If this is not content based analysis, could the Chair amplify on what it meant by restricting this to only code in the basis and eliminating content based analysis? I am truly trying to understand what it is, the limitation on this witness is.

The CHAIRMAN. I believe the witness is testifying to the items in this conversation which he believes support the conclusion that it is code, and I believe that is permitted testimony and I will permit him to answer the questions in that respect.

Mr. SHUY. By means of logical inconsistency, then, as I was following that point, that a change in procedure or a change in plan, as this is proposed by Judge Hastings in Turn 21, is not grammatically consistent with the words he uses, that is, if he were to say, "No, let's not go back and get some more things," or "you shouldn't go back and get some more things"—and I have to use words here, because that's what we are working with—then he would say something like, "Well, let's not do that, let's do something else." In other words, when I said "causal connector," it is very much like syllogistic logic, "if this, if this, then that," a therefore statement. A therefore statement takes the premise and takes it to its next logical step. It does not turn it around and say, "no, we're not going to go that way, we will go another way," and this is the logical inconsistency of this particular feature.

Mr. BRYANT. Do you find this type of speech pattern in the October 8th conversation?

Mr. SHUY. No, I do not.

Mr. BRYANT. Dr. Shuy, in addition to logical inconsistencies, is there another characteristic associated with the use of code which you also found in the October 5th conversation?

Mr. SHUY. Yes, repeated understandings, confirmations of understanding.

Mr. BRYANT. And what are those?

Mr. SHUY. Well, in a conversation which is highly complex, we often give feedback to the other person that we understand what they are saying, it's a conversation that you understand. We often even request that of the other speaker, "Do you get my drift?" and things of that sort.

In a conversation which has high complexity, that is to be expected. Complexity of the ideas presented in this conversation are not highly complex, and yet we have confirmations of understanding given by Judge Hastings on three occasions here, first in line 15, where—well, first of all——

Mr. BRYANT. Are you on the October 5th conversation?

Mr. SHUY. I'm sorry, yes.

Mr. BRYANT. Let me first ask you this question——

Mr. SHUY. OK.

Mr. BRYANT. Why are repeated confirmations associated with coded conversations?

Mr. SHUY. Because coded conversation has in it meanings which are not necessarily apparent to other people, and if the conversation is in code, it is necessary that both parties understand it, and since it is partial code, the burden is even heavier on the participants to make sure that each knows what the other is talking about.

Mr. BRYANT. OK. Turning to the October 5th conversation, where are the repeated confirmations?

Mr. SHUY. All right. On the October 15th, first of all——

Mr. BRYANT. October 5th conversation.

Mr. SHUY. I'm sorry, October 5th conversation, I would like to set it by beginning at Turn 13, where Judge Hastings says, "and everything's okay. The only thing I was concerned with was, did you hear if, ah, you hear from him after we talked?" Mr. Borders says, "yea," which is an answer to the question, and there Judge Hastings says, "oh, okay," which is a confirmation that he understands that Mr. Borders, what Mr. Borders' "yea" means.

Again, beginning with Turn 18, Mr. Borders says, "See, I had, I talked to him and he, he wrote some things down for me." Judge Hastings answers, "I understand." Again, line 20, Mr. Borders says, "And then I was supposed to go back and get some more things," to which Judge Hastings offers a double confirmation of understanding, "Alright. I understand." So, we have these three occasions where Judge Hastings has confirmed his understanding to non-complex ideas.

Mr. BRYANT. Are all or nearly all of the repeated confirmations in the conversation uttered by Judge Hastings?

Mr. SHUY. Yes.

Mr. BRYANT. How does the October 8th conversation compare with respect to the characteristics of repeated confirmations?

Mr. SHUY. Well, we do have confirmation, but the October 8th conversation is considerably more complex in its detail, such as the flight numbers, the airline name, the time of arrival, the hotel, and so forth, but we don't have the "I understand" type of confirmation.

Mr. BRYANT. Dr. Shuy, I would also like to ask you about the other possible interpretations of the October 5th conversation. Is it true that the fact that Judge Hastings and Mr. Borders may have spoken hundreds of times may impact upon how they conversed with one another?

Mr. SHUY. Well, first of all, there is some evidence of that in this conversation, "Yes, my brother," "Hey, my man," the greeting routine is one which appears to be between people who knew each other well.

The fact that they knew each other well, if they did, is not necessarily relevant to any of the analysis that I'm doing, however, it doesn't play into any of this.

Mr. BRYANT. Why doesn't this fact explain the cryptic and illogical nature of the conversation, the October 5th conversation?

Mr. **Shuy**. Because the clustering features indicate that it was carefully selected, cryptic, if you will, words that were picked by the speakers to indicate something.

Mr. **Bryant**. Now, let me ask you this question about the October 5th conversation: Is it possible that the pause fillers and the repeated words and false starts could be explained by the fact that either Borders or the judge were distracted by something, for example, during the conversation?

Mr. **Shuy**. Well, I would like to answer by calling attention to how rapid this conversation is. The opportunity for distraction, even though there are pause fillers, they go by extremely fast. I don't know whether you have heard the tape yet or not, but if you do hear it, you will notice the speed of it. When one is distracted, there tends to be a bit more of a pause length than we have here.

Mr. **Bryant**. So, to answer my question directly, is it possible that they were caused by distraction?

Mr. **Shuy**. No, I don't believe so.

Mr. **Bryant**. All right. In fact, how long is the October 5th conversation?

Mr. **Shuy**. Between Mr. Borders and Judge Hastings, it is a total of 29 seconds.

Mr. **Bryant**. All right. Now, what about the speed of the conversation? The members of the committee have heard the tape recording, and I would ask you at this time, does the speed of the conversation change your conclusion that Judge Hastings and William Borders are using a code?

Mr. **Shuy**. No.

Mr. **Bryant**. And why not? It was rapid, it was 29 seconds long. Why doesn't the speed of it change your conclusion with regard to the fact that it is a code?

Mr. **Shuy**. Because the features that we have been discussing are there, whether fast or slow, they are there.

Mr. **Bryant**. Also, the transcript of the October 8th conversation between Judge Hastings and Borders, which you used as a comparison, indicates that a third person, someone named John Crump, may have been in the room with William Borders.

Mr. **Shuy**. That's right.

Mr. **Bryant**. If Mr. Crump was present during the October 8th conversation, would you agree that this could have had an impact on Mr. Borders' speech?

Mr. **Shuy**. It could have, it could have caused him to be even more cautious, in terms—if they had been wanting to speak in code, when a third person is present, you must even be more cautious perhaps than when you have nobody present.

Mr. **Bryant**. All right. Then, why doesn't that fact change your conclusion that the October 5th conversation employs a code?

Mr. **Shuy**. Because the features of the code indicators are in the October 5th and not in the October 8th.

Mr. **Bryant**. And had you studied other conversations?

Mr. **Shuy**. Yes, I have.

Mr. **Bryant**. Had you studied other conversations of Borders when he is talking with somebody listening in?

Mr. **Shuy**. Yes, I did—I'm sorry, would you ask me the question again? I may have lost a part of it.

Mr. BRYANT. I asked if you have studied other conversations of William Borders when he was talking without somebody listening in.

Mr. SHUY. As far as I know, nobody was listening in except, of course, the tape recorder was going, so——

Mr. BRYANT. All right. Dr. Shuy, you have highlighted here today various speech characteristics of the October 5th conversation. How firm is your conclusion that the October 5th conversation between Judge Hastings and William Borders is in code?

Mr. SHUY. I'm very confident.

Mr. BRYANT. Thank you.

We pass the witness, Mr. Chairman.

The CHAIRMAN. Is there cross-examination?

Mr. ANDERSON. There will be, Mr. Chairman. We had assumed the witnesses today included Ms. Rogers and Mr. Miller. I must confess, I devoted my time last evening to the five prior occasions, I believe, in which Mr. Miller has testified in preparing for that. I was apprised by Mr. Miller early this morning that he had been advised he could go back to Miami and return. Frankly, I did not anticipate seeing Dr. Shuy until Monday, if at all, and this is a sufficiently complex cross-examination that I would not like to wing it.

I would ask the chair that we put this one to Monday, simply this is not fair at this point to advance a witness of this magnitude to a point at this time. I would represent that my cross-examination is going to take more than the half an hour that the chair could allot, anyway, and I think it ought to be heard.

The CHAIRMAN. Let me just say, both to Mr. Anderson and to House counsel, we have had several occasions here in the last day or so where we have not been able to go forwards because someone was not prepared with that witness or had prepared something else or had been unaware that we would be moving as rapidly as we have.

I would request that the House managers, when we begin Monday at 9:30, give us a revised schedule for the witnesses that they intend to call from now until the completion of their case, if they could, indicating who will be called Monday morning, who Monday afternoon, Tuesday morning, and so on through the week, or as much of the week as you anticipate needing for the completion of your case, and then we will ask the same thing of Mr. Anderson when his case begins, so that we will have a clearer notion of where we are going.

I think it is so difficult for us to keep a quorum of Senators here, that, when they make the effort to be here, I think it is incumbent upon all of us to try to move, to keep testimony going.

Mr. BRYANT. Mr. Chairman, we are completely in accord with your instructions to us. I completely agree. We have had difficulty guessing how much time is going to be taken each day and we guessed wrong and it cost us 15 minutes this morning. We will try to guess a little more accurately next week.

I would just observe, we have flown some witnesses up here and back twice already this week, and inasmuch as this is Friday, we thought it might be best to try to guess with a little more precision, so we wouldn't have them here over the weekend.

The **Chairman**. I would suggest you err on the side of having them here next week, because we will try very hard to move forward, starting Monday morning, and stick to a schedule going throughout the week. I hope we don't have to shift to some night sessions. The committee has considered that, but it is going to reserve a decision on that until probably Tuesday of next week. Those would not be in lieu of the day sessions, they would be in addition to the day sessions. We would prefer not to have to do that, but we are substantially behind where we expected the House would be in the presentation of its case at the end of this first week, and I believe the House is behind where it expected to be. Am I correct?

Mr. **Bryant**. Well, Mr. Chairman, that's correct but it is not due to us, it is due to the fact that both Houses have had votes. I don't offer that in defense, but only in explanation. We are quite happy to work 5 nights a week. We would like to get this over with.

The **Chairman**. I'm not assigning blame. I think that clearly the votes of the House are a problem and the votes of the Senate are a problem, and we have had some other difficulties that have kept us from moving forward, but we will accede to Mr. Anderson's request at this time and recess until Monday morning, at 9:30.

Senator **Pryor**. Mr. Chairman?

The **Chairman**. Yes, Senator Pryor.

Senator **Pryor**. Mr. Chairman, two days ago, I believe it was, the actual tapes of these two conversations in question were played. It was impossible for me to be in the committee room. I have not heard those tapes. I am about to make a request of the technicians, that I be allowed, even after we recess, to hear these tapes. My question is this: I don't want to impede the hearings, I don't want to do this if counsel does not want me to do it in public, but would other members of the committee like to hear these again, if they would like to refresh their memory or if they did not hear them the other day, would they like to join me in this? I don't care whether it is privately or publicly, but I would like to hear the tapes and I would request that of the technicians, if it is technically possible.

The **Chairman**. I think that is an excellent suggestion and I would just say that perhaps the time to do that would be Monday morning, before we begin cross-examination, to hear the tapes at that time.

Mr. Anderson?

Mr. **Anderson**. I agree with that, but there are two points of disclosure, one which might aid Dr. Shuy over the weekend, and the other which might aid the committee. I would anticipate that during the course of my cross, these and some other tapes may have to be replayed to give the committee the same basis for kind of comparison about speed and content analysis and pause fillers and things like that, and I would also, since there are several tapes that Dr. Shuy has listened to and several transcripts that are in evidence that he has prepared, I would like to alert him and the committee that I would expect to do a bit of structural and conversational analysis with those tapes and transcripts, so that we all may leave the room with a better understanding of both the nature and limits of linguistic analysis. So, simply on that proffer, there will be some tapes played Monday.

Senator RUDMAN. Mr. Chairman?

The CHAIRMAN. Senator Rudman.

Senator RUDMAN. Before we leave this afternoon, I think in terms of everybody's timing, I wonder if Mr. Anderson could give us some sense of how long he would best estimate—he obviously can't be bound that—his cross-examination of Dr. Shuy will extend, and that will give us some idea about witnesses on Monday and Tuesday.

Mr. ANDERSON. Senator, just give me a moment to think and I will try to give you the estimate. Depending on how well Dr. Shuy and I work together, I don't think it would exceed 2 hours and might be somewhat less.

Senator RUDMAN. Thank you, Mr. Chairman.

Mr. BRYANT. Mr. Chairman, the House would submit that we are bringing witnesses in for Monday and worrying about the schedule, just as the Senators are. The next half-hour could be used by Senators asking questions or by us playing those tapes, and we are quite happy to do it.

The CHAIRMAN. Well, our order of procedure here has been to allow the House to present the witness, allow cross-examination, and then have committee members and really have redirect and recross before committee members begin questioning. I think that is a good procedure to continue following.

We will recess until Monday morning, at 9:30.

[Whereupon, at 4:06 p.m., the committee was adjourned, to reconvene on Monday, July 17, 1989, at 9:30 a.m.]

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United States Senate
IMPEACHMENT TRIAL COMMITTEE
(ON THE ARTICLES AGAINST JUDGE ALCEE L. HASTINGS)
HART SENATE OFFICE BUILDING, ROOM SH-802D
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IMPEACHMENT TRIAL COMMITTEE
NINTH ORDER

The Committee has considered the request of Judge Hastings to issue subpoenas duces tecum to the Attorney General and the Director of the FBI to produce certain documents. This request follows the production to Respondent of numerous Justice Department and FBI documents, which were made available to him at the behest of the Committee. His present request is, in significant part, a request for complete versions of documents previously produced to him in redacted form. The redactions were made by Justice and the FBI to protect confidential sources and other internal information. Both earlier and in dealing with his present request, the Committee has attempted to assure that all documents and evidence material to Judge Hastings' defense -- either in terms of being exculpatory or affecting the credibility of House witnesses -- were provided to him. Although there could be circumstances in which the Senate would determine in an impeachment proceeding that the need for the evidence outweighed countervailing claims of confidentiality or privilege, we do not believe that those circumstances exist here.

Accordingly, the Committee rules as follows:

The Thornburgh Subpoena

1. Category 1 requests a full copy of the Justice Department "Pros. Memo" recommending indictment of Judge Hastings and William Borders for the Romano bribe conspiracy. Judge Hastings has been supplied with this memo, but in a redacted form. The redactions, which have been reviewed by the Committee, are of the prosecutors' evaluations of whether and how the case should be brought. All evidentiary material in the memo has been supplied to Judge Hastings. The Committee will not issue a subpoena for this material.

2. Category 2 requests all other memos written or adopted by Reid Weingarten and Robert Richter, two Justice Department lawyers involved in the Hastings prosecution who will be witnesses. Justice says it has produced all such material. The Committee will not issue a subpoena for this material, but does request that the Department of Justice check to assure full production of all prior statements of these witnesses, and promptly produce anything that has not yet been supplied to Judge Hastings. If all material called for has already been produced, Justice should so certify.

3. Category 3 requests the file of former Assistant United States Attorney Steven Allen, who handled Dredge's

Baltimore drug prosecution. No subpoena will issue, but the Committee does request the Department of Justice to locate and produce this material for respondent. If after Justice locates the file there is something they object to producing, they should produce all non-objectionable material to respondent promptly, and bring any objection to the Committee's attention.

4. Category 4 requests a full copy of the Justice Department memorandum summarizing the results of their investigation of unauthorized leaks to the Miami press of material from the Hastings/Borders investigation. Judge Hastings has been supplied with this memo in a redacted form. The redactions, which have been reviewed by the Committee, are of the names of particular FBI agents who were interviewed or otherwise investigated. None of the FBI agents whose names are redacted is expected to be a witness here. The Committee will not issue a subpoena for this material. If anyone whose name has been redacted is called as a witness, the Committee will revisit this issue.

The Sessions Subpoena

1. Category 1 requests an FBI teletype dated May 1, 1981, [actually 1986] from the Miami office to the FBI Director urging Judge Hastings' criminal prosecution for the alleged

1985 wiretap disclosure. The memo is apparently authored in part by FBI agents on the House witness list. Judge Hastings has been supplied with a copy of this memo in a redacted form. The redactions remove references to other electronic surveillances, both actual and contemplated, not directly related to the Mayor Clark situation. The Committee has examined the context of the redactions and does not believe they are of significance in this case; accordingly, it will not issue a subpoena at this time. However, the Committee has requested the FBI to provide Judge Hastings with a generic description of the redacted material, and we understand this has already been accomplished.

2. Category 2 requests a letter dated July 29, 1982, from the Washington FBI office to the Director discussing and forwarding memos prepared by two FBI agents giving their perceptions of the 1981-82 investigation of leaks about the Hastings/Borders case. Judge Hastings has been supplied with a two-page summary of this 35-page document with the agents' names redacted. The full document has been revised on behalf of the Committee. The Committee has determined that there is no relevant or helpful evidence in this material, and accordingly will not issue a subpoena for it. If either of the agents whose names were redacted are called as witnesses, the Committee will revisit this issue.

In addition, the Committee has reviewed the prior testimony of Jimmy C. Harmon given before the Eleventh Circuit Investigating Committee on May 23, 1985, and believes that it would not be appropriate to permit in camera review of that transcript by counsel for the parties or to release the transcript for use in these proceedings. The transcript contains no evidence substantively related to the Articles of Impeachment against Judge Hastings. Any marginal benefit which it might provide as possible impeachment is substantially outweighed by the need for maintaining the confidentiality of this highly sensitive information. The Committee will retain that transcript in its custody during the course of these proceedings. In the event that Mr. Harmon is called as a witness, counsel for the committee are authorized to inform the parties, in general terms, of the nature of the testimony contained in that transcript so that an appropriate means of eliciting his testimony here can be determined.

Jeff Bingaman, Chairman

Arlen Specter, Vice Chairman

Dated: July 14, 1989

IMPEACHMENT OF JUDGE ALCEE L. HASTINGS

MONDAY, JULY 17, 1989

U.S. SENATE,
IMPEACHMENT TRIAL COMMITTEE,
Washington, DC.

The committee met, pursuant to notice, at 9:37 a.m., in Room SH–216, Hart Senate Office Building, Hon. Jeff Bingaman, chairman of the committee, presiding.

Present: Senators Bingaman (chairman), Specter (vice chairman), Durenberger, Pryor, Rudman, Bryan, Bond, Kerrey, Gorton, Lieberman, and Burns.

House managers present: Representatives Bryant, Conyers, Synar, Gekas, and Fish.

Counsel present: Terence J. Anderson, counsel for Judge Hastings; Patricia Graham Williams, counsel for Judge Hastings; Alan I. Baron, special counsel, House Impeachment Committee; Janice E. Cooper, assistant special counsel; Patricia Wynn, assistant special counsel; Lori E. Fields, assistant special counsel; Michael Davidson, Senate Legal Counsel; Elaine Stone, counsel, Senate Impeachment Trial Committee; Mark Klugheit, counsel, Senate Impeachment Trial Committee; and Bruce McBarnette, counsel, Senate Impeachment Trial Committee.

Staff present: Anthony Harvey, administrator, Senate Impeachment Trial Committee; P. Casey McGannon, staff assistant, Senate Impeachment Trial Committee; and Isabel McVeigh, staff assistant, Senate Impeachment Trial Committee.

The CHAIRMAN. The committee will come to order.

I am informed that the House managers would like to do a small amount of additional direct examination with Dr. Shuy at this point before cross-examination begins. Is that correct?

Mr. BRYANT. That is correct, Mr. Chairman.

The CHAIRMAN. Is there any objection to that?

Mr. ANDERSON. No objection.

The CHAIRMAN. If you would recall Dr. Shuy, then, and go ahead.

Mr. BRYANT. Mr. Chairman, the House recalls Dr. Roger Shuy.

Mr. Chairman, this redirect will not go to the principal purpose for which he was called as an expert witness, but will be simply for the purpose of clearing up the transcript discussion we had with regard to the transcripts that the House has offered into evidence.

Dr. Shuy, at the request of the House of Representatives, have you reviewed the 22 taped conversations and the transcripts that were offered by the House as exhibits in this case?

TESTIMONY OF ROGER W. SHUY, Ph.D. (continued)

DIRECT EXAMINATION (CONTINUED)

Mr. SHUY. Yes, I have.

Mr. BRYANT. When conducting that review, what kind of equipment did you use to listen to the tapes?

Mr. SHUY. I used a Bang and Olefson brand special model called Bayocord, Model 9000, using Nakamichi earphones.

Mr. BRYANT. Did you compare what you heard on the tapes with the transcripts that are marked as exhibits in this case?

Mr. SHUY. Yes, I did.

Mr. BRYANT. How do the transcripts which have been offered as exhibits compare to what you heard on the tapes?

Mr. SHUY. They are accurate with a few minor exceptions.

Mr. BRYANT. Dr. Shuy, let me hand you what has been marked as House Exhibit 220. Are these the corrections you have made to the transcripts of the tape?

Mr. SHUY. Yes, they are.

Mr. BRYANT. Did you make these corrections based on listening to the tape recordings on your sophisticated equipment?

Mr. SHUY. Yes, I did.

Mr. BRYANT. Mr. Chairman, at this time, I move House Exhibit 220 into evidence. In addition, by the end of the day, the House will provide the Senate and counsel for Judge Hastings a copy of each of the transcripts with the corrections made and with all underlining in those transcripts deleted, which I believe is consistent with the expression of the chairman of late last week.

The CHAIRMAN. Is there objection to this Exhibit 220 being admitted?

Mr. ANDERSON. Not at this time. I would like to reserve the right, after we have had a chance to study it, to bring any matters to the committee's attention. But no objection at this time.

The CHAIRMAN. All right. It will be admitted subject to that condition.

[The document referred to was marked House Exhibit No. 220 and was received in evidence.]

Mr. BRYANT. Mr. Chairman, we also need to ask for clarification about the committee's desire with regard to the parenthetical commentary which was inserted in the transcripts which you now have to explain lengthy pauses in the tapes, to explain what was going on when there was no audible conversation. There was some discussion among the members of the committee, but we did not get a clear reading about what you wanted us to do.

The CHAIRMAN. Let us discuss that in closed session before the afternoon, and we will advise you at that time.

Mr. BRYANT. Thank you. No further questions.

Mr. ANDERSON. Mr. Chairman, a couple of mechanical things, if I might, at the outset. To facilitate the committee's work, we have prepared additional copies of the transcripts that I will be calling to Dr. Shuy's attention. It might be convenient if they could be given to the members of the committee so that they do not have to thumb through the notebooks.

The CHAIRMAN. That would be helpful to us.

Do we have someone who could take those from counsel?

Mr. **Anderson**. And as I indicated on Friday, mechanically I will be asking that all of one and a portion of another tape be played. I have asked one of my young colleagues to try and cue ours up to the correct point. However, I would represent we have never worked with whatever kind of equipment it is here, and I do not know, when we ask for the playing, how we want to handle getting that done.

The **Chairman**. Mr. Anderson, let me just inquire. My recollection of our meeting on Friday was that several Senators asked if we could play the October 5 tape.

Mr. **Anderson**. That will be the first one in my cross-examination that I asked——

The **Chairman**. Should we have that done now? Is that helpful?

Mr. **Anderson**. It might be helpful if I get in a little background that comes within the first five or so minutes of my colloquy.

The **Chairman**. OK. Proceed.

Mr. **Anderson**. And I could ask one of my young associates to sit there if there is someone who can help him put our copy in the machine, or if the FBI technician or whoever ordinarily——

The **Chairman**. I assume the FBI technician is still here. Is that correct?

Mr. **Bryant**. Mr. Chairman, the House will be glad to provide someone to operate the machine.

The **Chairman**. That would be helpful to us.

Mr. **Anderson**. Perhaps the two of them can work together.

The **Chairman**. OK.

CROSS-EXAMINATION

Mr. **Anderson**. Good morning, Dr. Shuy. My name is Terry Anderson.

Mr. **Shuy**. Good morning.

Mr. **Anderson**. Now, Dr. Shuy, insofar as your opinion relates to Judge Hastings' remarks in the October 5th telephone conversation, it rests on an extraordinarily limited amount of data, does it not, sir?

Mr. **Shuy**. It is a very short conversation.

Mr. **Anderson**. And the conversation that you claim contains evidence of a hastily constructed partial word code lasted 29 seconds?

Mr. **Shuy**. That is correct.

Mr. **Anderson**. And during that conversation, Judge Hastings spoke 77 words, if you count all the pause fillers, the "ums" and the responses, is that correct, the repetition?

Mr. **Shuy**. I do not have that figure in front of me, but I will take your word for it. It sounds about accurate.

Mr. **Anderson**. Thank you, Dr. Shuy.

Now, you had only one other recorded conversation in which Judge Hastings and Mr. Borders were participants?

Mr. **Shuy**. That is correct.

Mr. **Anderson**. And in a scientific sense, that is at least a part of your control base; is that correct?

Mr. **Shuy**. Comparison, yes.

Mr. **Anderson**. And that conversation lasted something less than a minute?

Mr. **Shuy**. I think it was 59 seconds.

Mr. **Anderson**. And in that conversation, both men were aware that John Crump, a third person, was present in the office; is that correct?

Mr. **Shuy**. John Crump was reported to have been present by——

Mr. **Anderson**. In conversational analysis, the structure of the dialogue suggests that he was, in fact, there, does it not?

Mr. **Shuy**. Yes, yes. The request of the pen to John indicates that he is asking John for a pen.

Mr. **Anderson**. And in that conversation, both men were addressing new topics calling for specific responses rather than discussing apparently matters on which they had had prior discussions. That is correct, is it not?

Mr. **Shuy**. They appear to be new topics, yes.

Mr. **Anderson**. I mean, it was when I'm arriving today.

Mr. **Shuy**. Yes.

Mr. **Anderson**. What plane I am taking.

Mr. **Shuy**. The flight number.

Mr. **Anderson**. As opposed to the other conversation, clearly presumes under any interpretation that the matters under discussion have been the subject of prior discussion?

Mr. **Shuy**. In the October 8th?

Mr. **Anderson**. However you construe the "letters for Hemp" or any other words, clearly what is going on in that conversation is a subsequent discussion to a prior one?

Mr. **Shuy**. To something that had happened before, yes.

The **Chairman**. Could the witness clarify which conversation he is discussing now?

Mr. **Shuy**. Well, if you will, sir, I believe Mr. Anderson is referring to the October 8th conversation where they are talking about plane reservations and so forth as being new information—if I may restate it for you.

Mr. **Anderson**. Please.

Mr. **Shuy**. And the October 5th conversation about being past information.

The **Chairman**. Thank you.

Mr. **Shuy**. Or past knowledge, information about past knowledge.

Mr. **Anderson**. I'll try to maintain my precision, the October 8th conversation from the standpoint of conversation analysis in reality provided only evidence that these two men were capable of observing standard conversational conventions when conversing in the presence of a third person?

Mr. **Shuy**. It says that, yes.

Mr. **Anderson**. And in point of fact, that conversation was largely otherwise irrelevant to your analysis of the October 5th conversation, was it not?

Mr. **Shuy**. If you consider the fact that—if I may——

Mr. **Anderson**. Well, if you could answer the question and then give an explanation so we know we are at the end.

Mr. **Shuy**. The conversation of October 8th certainly did involve, or appears to involve a Mr. John Crump being in Mr. Borders' presence, yes. Now, I have lost your question.

Mr. **Anderson**. Well, given the fact that there was a third party present, they were discussing new topics with very specific agendas that called for very concrete information——

Mr. **Shuy**. That is correct.

Mr. **Anderson** [continuing]. The October 8th conversation is not truly comparable in context or content to the October 5th one, is it?

Mr. **Shuy**. In terms of that feature, it is not totally comparable because of the third person present, yes.

Mr. **Anderson**. And what it really does establish is that Mr. Borders and Judge Hastings were capable of observing normal conversational conventions in dialogue addressing new topics?

Mr. **Shuy**. It does that, yes.

Mr. **Anderson**. But that is really all that one could infer from that conversation about those two men and their speech patterns, is it not?

Mr. **Shuy**. No. I believe that you put a heavy emphasis on the fact that a third person is present. I am certain that most people in conversation many times have a third person present.

Mr. **Anderson**. But we are using this as the control base for the October 5th conversation. There was not a third person present in that conversation.

Mr. **Shuy**. As far as I know, there was not on October 5th.

Mr. **Anderson**. And that one did not address new topics, did it?

Mr. **Shuy**. Not that I am aware of, no.

Mr. **Anderson**. So if we are only looking to the October 8th as to its relevance to your analysis of the October 5th, am I correct in saying that all it can establish for that purpose is that these men are capable in a different context of maintaining normal conversational conventions?

Mr. **Shuy**. I would say that it does maintain that it—I am sorry. It does indicate that these two men are capable of maintaining normal conversation. In this case, it happened to be with a possible third person.

Mr. **Anderson**. Let me rephrase my question and maybe we will get the—in reality, Dr. Shuy, your conclusions are based almost entirely upon an analysis of the 29-second conversation in which Judge Hastings spoke 77 words?

Mr. **Shuy**. The data exists in the conversation. That is what I analyzed.

Mr. **Anderson**. And that is essentially the sole source of your data?

Mr. **Shuy**. If there had been more data, I would have analyzed it.

Mr. **Anderson**. Well, that would have been nice for all of us.

Now, Dr. Shuy, I thought I heard you testify on Friday that speed and intonation were irrelevant to your analysis of the October 5th conversation. Did I hear you correctly, sir?

Mr. **Shuy**. That is probably an overstatement, either of your hearing or my speaking. I am not sure which at this point. Speed in a tape does have some effect on a conversation. In the case of the features that I examined, it is not relevant.

Mr. **Anderson**. So the only features you examined in that conversation, you thought that speed and intonation were not relevant?

Mr. **Shuy**. For the features that I examined, yes, they were not.

Mr. **Anderson**. But you did not examine all the features of that conversation; is that correct?

Mr. **Shuy**. I do not know what you have in mind. I did analyze topics. I did some other analyses as well, yes.

Mr. **Anderson**. Well, to focus what factors you did analyze on, as I recall your testimony, you testified that your conclusions were based upon the number and location of pause fillers, the number and location of false starts, and the presence of illogical responses?

Mr. **Shuy**. And repeated words and——

Mr. **Anderson**. That is what I thought false starts were.

Mr. **Shuy**. No, they are different. And confirmations of understanding.

Mr. **Anderson**. Now, these are all matters that were shown on the transcript you prepared of that conversation, were they not?

Mr. **Shuy**. Yes.

Mr. **Anderson**. Now, Dr. Shuy, I think it was brought out, but you did testify before the Senate, or your testimony was read before the Senate in the proceedings regarding Senator Williams, were they not?

Mr. **Shuy**. Yes.

Mr. **Anderson**. And at the outset of that testimony, you warned the Senate about excessive reliance on transcripts, did you not?

Mr. **Shuy**. I did.

Mr. **Anderson**. And did you not remind the Senators in that proceeding that written transcripts camouflage pauses, interruptions, and other nuances of meaning necessary to ordinary communication?

Mr. **Shuy**. Yes.

Mr. **Anderson**. You did not ask that the tape be played before, during your opinions you expressed on Friday, so perhaps now would be an appropriate time to do that, Dr. Shuy.

Mr. **Shuy**. That is fine with me.

Mr. **Anderson**. Mr. Chairman, if we are coordinated to do so, if we could play now the October 5th conversation. I think that is House Exhibit 54A.

[A tape recording was played at this point.]

VI.

October 5, 1981   5:12 p.m.

UF: Law Office. One moment.

(Placed on hold)

UF: May I help you?

ALH: Girl; I called long distance and you put me on hold. This is Alcee. How you doing?

UF: I'm sorry; but I have all these lines going in here and I didn't know, if I'd known it was you, they could've waited.

ALH: I understand. Bill's gone?

UF: No. Hold on just a minute.

ALH: Alright.

(Placed on hold)

54B

WAB: Yes, my brother.

ALH: Hey, my man.

WAB: Um hum.

ALH: I've drafted all those ah, ah, letters, ah, for Hemp...

WAB: Um hum.

ALH ...and everything's okay. The only thing I was concerned with was, did you hear if, ah, you hear from him after we talked?

WAB: Yea.

ALH: Oh. Okay.

WAB: Uh huh.

ALH: Alright, then.

WAB: See, I had, I talked to him and he, he wrote some things down for me.

ALH: I understand.

WAB: And then I was supposed to go back and get some more things.

EXHIBIT
54b
HOUSE

ALH: Alright. I understand. Well then, there's no great big problem at all. I'll, I'll see to it that, ah, I communicate with him. I'll send the stuff off to Columbia in the morning.

WAB: Okay.

ALH: Okay.

WAB: Right.

ALH: Bye bye.

WAB: Bye.

Mr. ANDERSON. Dr. Shuy, I gather you and I have a common failing. We do not keep our voice close enough to the microphone.

Mr. SHUY. I will try to sit closer.

Mr. ANDERSON. Now, let me start, Dr. Shuy, with pause fillers. They serve several purposes, do they not, in conversation?

Mr. SHUY. Yes, they do.

Mr. ANDERSON. For example, Dr. Shuy, I asked one of my associates to annotate a portion of the transcript of your testimony on Friday to indicate any pause fillers he could find just by listening to the videotape without that equipment you described. Let me take a brief passage and report his findings so that we have common ground for discussion. I guess I will have to ask you to take my associate on faith here, but let me show you at least a copy.

I do not think this needs to be marked, Mr. Chairman. Let me give a copy to the managers, one for Dr. Shuy—I am not sure I have enough, but for the Senators. It is from page 871 of our transcript.

Now, Dr. Shuy, as we picked them up with the insensitive equipment, the statement I am looking at, you are responding to a question by Mr. Bryant asking you to explain the focus of conversation analysis, and you begin: "All right. Conversational analysis is obviously a conversation, uh, that is, it analyzes the structure of conversation to determine such things as turn-taking procedures, uh, introduction of topics, recycling of topics, uh, interruptions, uh, pauses, and, uh, responses to topics introduced by others and many other things."

Now, assuming the accuracy of my associate's work, we have something like six pause fillers in a single sentence; is that correct, Dr. Shuy?

Mr. SHUY. That appears to be correct.

Mr. ANDERSON. I take it you would not consider these pause fillers in that context in any way abnormal?

Mr. SHUY. Well, perhaps I am not a normal speaker, but I was speaking very carefully, or trying to speak very carefully, and thinking on my feet.

Mr. ANDERSON. And in point of fact, one of the functions that pause fillers serve is simply an indication that the speaker in groping for the right word?

Mr. SHUY. Absolutely.

Mr. ANDERSON. Striving for precision?

Mr. SHUY. Exactly.

Mr. ANDERSON. And in large measure, in oral speech one of the functions they serve are punctuation.

Mr. SHUY. I would not call it punctuation, but it does serve to——

Mr. ANDERSON. Give breaks?

Mr. SHUY. Give breaks, yes.

Mr. ANDERSON. It puts in something like an oral comma in a place where you are trying to say to someone we are moving along?

Mr. SHUY. Oh, I see what you mean. Yes, yes.

Mr. ANDERSON. And these very nice court reporters are usually generous enough to recognize that our "ahs" mean put in a comma rather than put in "ah." But in any event, that is a fairly standard use of pause fillers.

Now, I take it in other contexts, a pause filler accompanied by a delay might indicate an honest attempt at recollection?

Mr. **Shuy**. It does.

Mr. **Anderson**. If someone were to ask me—if you asked me last week, I could tell you—"Where were you the week before last?" I might say, "Uh, oh, gee, I think I had dinner." And that would be——

Mr. **Shuy**. Quite normal.

Mr. **Anderson**. Yes. And in the context of a code, a pause filler with no accompanying delay would indicate a well-practiced and well-understood code if it indicated a code at all, would it not?

Mr. **Shuy**. In combination with other things.

Mr. **Anderson**. So, I mean, I would hope that if some of our Government intelligence agents have to speak in code, they try to make their speaking as normal as possible and do not have long pauses while they struggle for what is the word for code blue or whatever is going on.

Mr. **Shuy**. Oh, I am not sure that they do.

Mr. **Anderson**. But they should. I mean, practice code people would talk—if you and I had rehearsed a code over the years, I take it we could use it with some confidence that both of us would know what the words meant and there would not be any long pauses?

Mr. **Shuy**. That is essentially what it means to learn another language, actually.

Mr. **Anderson**. It is learning another language. And, conversely, if you and I tried to invent a language in the corridor out there and came back and then tried to construct a coded conversation using a hastily constructed partial word code, at least as tired as I am right now there might be some real pauses in the conversation?

Mr. **Shuy**. There could be, but it is not necessarily a requirement.

Mr. **Anderson**. Well, it does undermine the notion that this was hastily constructed, does it not; the facility with which, the speed at which it is given is at least a factor that bears upon that issue?

Mr. **Shuy**. Well, I think there are a number of factors that——

Mr. **Anderson**. Well, I understand, but that would be one of them, would it not?

Mr. **Shuy**. It could be one.

Mr. **Anderson**. Now, Dr. Shuy, not as it was presented today, but as the October 5th conversation was presented on Friday, it was, to use words you used in another proceeding, wrenched from its context, was it not?

Mr. **Shuy**. The October 5th conversation?

Mr. **Anderson**. Yes.

Mr. **Shuy**. Was wrenched from its context?

Mr. **Anderson**. Yes.

Mr. **Shuy**. I am not sure I understand what you mean. The October 5th conversation was wrenched?

Mr. **Anderson**. That is the one that facially talks about letters for Hemp, yes.

Mr. **Shuy**. I do not——

Mr. Anderson. Well, let me see if I can develop so we do understand. Now, facially, that conversation refers to letters for Hemp.

Mr. Shuy. Yes.

Mr. Anderson. And, structurally, that conversation suggests that Judge Hastings and Mr. Borders are discussing matters that they have discussed before, topics that have been addressed; is that correct?

Mr. Shuy. That is correct.

Mr. Anderson. Thus, in order to place that conversation in a full context, the listener would have to have some information about the prior conversations between Judge Hastings and Mr. Borders concerning letters or Hemp or other related topics; is that correct?

Mr. Shuy. It would certainly help.

Mr. Anderson. Certainly help. However, the conversation was presented here as one of a series—the eleventh, by my count—of recorded conversations, only two of which had Judge Hastings as a participant? Is that your understanding of the conversations you transcribed?

Mr. Shuy. Yes. Judge Hastings was a participant in two of them.

Mr. Anderson. Two of 12.

Mr. Shuy. Yes.

Mr. Anderson. And those were presented here in sequential orders, and "letters for Hemp" came up as No. 11?

Mr. Shuy. I believe it was No. 11, yes.

Mr. Anderson. And it was preceded by 10 conversations in which Judge Hastings was not a participant at all? The participants were Mr. Borders——

Mr. Shuy. Oh, yes.

Mr. Anderson [continuing]. Mr. Dredge, Mr. Rico.

Mr. Shuy. Yes.

Mr. Anderson. Now, in the Williams case, you warned the Senators early in your testimony that certain dangers are always present when listeners attempt to process audiotape-recorded evidence; is that not correct, sir?

Mr. Shuy. That is correct.

Mr. Anderson. You cautioned them, for example, that an improper disposition towards guilt may arise simply because the Government has decided to target a person for recording; is that correct?

Mr. Shuy. That is correct.

Mr. Anderson. And you also warned them about the danger of contamination, did you not?

Mr. Shuy. Yes.

Mr. Anderson. The risk of contamination, if I understood your testimony, is high when listeners are inundated with masses of recorded data involving different conversations among different speakers with different agendas. That is correct, is it not, sir?

Mr. Shuy. That is certainly correct.

Mr. Anderson. And the specific risk that you cautioned the Senators about in the Williams proceeding was the risk that the listener might succumb to the principle of contamination under which one speaker is falsely attributed the attitudes and intentions which were clearly attributable to a different speaker; is that correct?

Mr. Shuy. That is correct.

Mr. **Anderson**. And it was in that setting that you warned of the related danger that occurred when conversations are wrenched from their proper context as opposed to being seen in their proper context?

Mr. **Shuy**. Yes.

Mr. **Anderson**. So here we have a case which facially concerns letters for Hemp, structurally suggests that there have been prior discussions concerning letters for Hemp.

Mr. **Shuy**. Yes.

Mr. **Anderson**. And it is placed, however, not in the context of those prior discussions but in the context as if it is part of a series of 10 recorded conversations in which Judge Hastings is not even a party. It is in that context that I suggested that it was wrenched from its context. Is that a fair suggestion, Dr. Shuy?

Mr. **Shuy**. If there had been tapes of these letters of Hemp, it could have been put in a context, and that would have been the context. In that this was all I had, I analyzed what I had.

Mr. **Anderson**. Well, there certainly is a risk here, because it suggests there were conversations they did not have recorded, that it was presented out of its context, is there not?

Mr. **Shuy**. Out of the context of the letter sequence, yes.

Mr. **Anderson**. And presenting it as part of the series that clearly has a different context creates exactly the danger of contamination that you were warned against in the Williams case?

Mr. **Shuy**. I believe that that danger exists, yes.

Mr. **Anderson**. Now, just to develop the point, there is a clear context that can be established by listening to the prior 10 recorded conversations, is there not?

Mr. **Shuy**. Yes, there is.

Mr. **Anderson**. In those conversations, we have always Mr. Borders, mostly Mr. Rico, and sometimes Mr. Dredge, but only three participants?

Mr. **Shuy**. That is correct.

Mr. **Anderson**. And by analyzing the topics and introduction and doing the things that you do, one can establish or infer the agendas that each of those participants had in that conversation, can't you?

Mr. **Shuy**. Yes.

Mr. **Anderson**. And it is quite clear from such an analysis that Mr. Rico's agenda was to attempt to—and I do not want to overuse it because Mr. Borders is on trial, but to induce Borders to agree to a corrupt deal? That was the agenda.

Mr. **Shuy**. That appears to be the agenda, yes.

Mr. **Anderson**. And your analysis would support the view that Dredge as the informant was there for essentially the same purpose so that the Government's view of his cooperation might be enhanced?

Mr. **Shuy**. I was mystified as to Dredge's reason for being there, actually.

Mr. **Anderson**. You were not provided with enough information to establish his agenda?

Mr. **Shuy**. It was two very shorts tapes and very difficult to tell what his agenda was.

Mr. **Anderson**. And your analysis confirmed that Borders' agenda was to extract a corrupt $150,000?

Mr. SHUY. Yes.

Mr. ANDERSON. Now, if I understand, just to emphasize the point, the principle of contamination as you use it in conversation analysis suggests there is a danger that listeners inundated by those 10 conversations may falsely attribute the intentions Borders exhibited in the 10 to Judge Hastings in the eleventh?

Mr. SHUY. That is a possibility, yes.

Mr. ANDERSON. Now, in the Williams case, you thought it necessary to warn the Senators explicitly about this danger at the outset of your testimony, did you not?

Mr. SHUY. As I recall my testimony, yes.

Mr. ANDERSON. Trust me. I recall it well.

Mr. SHUY. Thank you.

Mr. ANDERSON. There will not be too many "ahs" or pause fillers when I refer to that this morning, Doctor.

Now, you did not think it was necessary to warn the Senators of that danger here, did you?

Mr. SHUY. It was not—no, I did not.

Mr. ANDERSON. Now, let me turn for a moment, Dr. Shuy, to the question of coded conversations and some of your very impressive background.

As I was reading the list of the 14 Federal criminal cases on your resume, I think I saw that your expert testimony was not actually submitted to the jury in one of those cases. Am I correct in that?

Mr. SHUY. That is correct.

Mr. ANDERSON. And that would have been the Delorean case?

Mr. SHUY. That is correct.

Mr. ANDERSON. Your testimony was proffered to the judge, but you had to leave for Europe before he ruled on its admissibility and it was withdrawn.

Mr. SHUY. Actually, I do not know that it was ever even submitted for admissibility. I do not understand the——

Mr. ANDERSON. That is not a case which factually a fact-finder had the benefit of your expertise?

Mr. SHUY. In the sense of fact-finder being jury?

Mr. ANDERSON. Yes.

Mr. SHUY. That is correct.

Mr. ANDERSON. Are there any other cases among the 14 in which this kind of pattern occurred?

Mr. SHUY. No. That was the one which was the only one like that.

Mr. ANDERSON. But there are some among the 14 in which your role was limited to that essentially of a teacher, are there not?

Mr. SHUY. Yes.

Mr. ANDERSON. And in those kinds of cases, you testified up front in an effort to teach the jurors what they should be listening for when they listened to the recorded conversations, rather than telling them what you had concluded after you had listened to the recorded conversations. That is correct, is it not?

Mr. SHUY. That is correct, in one.

Mr. ANDERSON. And that avoids a further danger of contamination, does it not?

Mr. SHUY. I had not thought of it that way.

Mr. ANDERSON. Well, I mean, if you educate the jury and then make them do the job of listening, they will listen guided by your expertise. If someone who holds himself out as an expert reports to them what he found in the tapes, there is a danger that a juror might say: Well, if Dr. Shuy found it, why do I have to pay that much attention? And that would be a form of contamination, would it not?

Mr. SHUY. I suppose you could consider it that. Actually——

Mr. ANDERSON. I suppose I could.

Mr. SHUY [continuing]. In the case that you are referring to, that was the judge's decision to do that. It was not necessarily the defense attorney's.

Mr. ANDERSON. Oh, I can imagine it was not necessarily the defense attorney's, and I can imagine it would not have been the prosecutor's here.

Now, how many of the 14 cases were you performing essentially the teaching role?

Mr. SHUY. One. In the deliberate sense.

Mr. ANDERSON. OK. There was another one, was there not, Doctor, where you wound up performing that role?

Mr. SHUY. No. The other case I believe you are referring to—McNown, is that the one?

Mr. ANDERSON. I think that is the one, yes.

Mr. SHUY. Yes. That was a retrial of a preceding trial in which McNown and Polly were co-defendants and which ended in a hung jury. They retried it individually, and in this particular case, the judge limited my testimony to providing an accurate transcript. So it was not the same role as the other case.

Mr. ANDERSON. In that case, then, all you did was what you have done this morning with Representative Bryant: confirmed the essential accuracy of the set of transcripts?

Mr. SHUY. Actually, we played the transcript. The judge used both the prosecution and the defense transcript. He could not decide which to use so he used them both, and I presented mine.

Mr. ANDERSON. Now, I think you also testified on Friday, Dr. Shuy, that you have served primarily as a witness for the defense in these Federal criminal cases; is that correct?

Mr. SHUY. That is correct.

Mr. ANDERSON. And from the list of lawyers one might contact, I was not able to pick out any cases in which you had served as a witness for the prosecution. Are there any?

Mr. SHUY. Not as a witness. I have certainly consulted with——

Mr. ANDERSON. But you have never appeared and testified on behalf of the Government——

Mr. SHUY. No, I have not.

Mr. ANDERSON [continuing]. In a Federal criminal case?

Mr. SHUY. No, I have not. I would be happy to, but——

Mr. ANDERSON. In a way, this is another first.

My research may be inadequate, Dr. Shuy—something that always bothers me—but I have not been able to find any Federal appellate decision in which the use of conversational analysis testimony in criminal cases has formally been approved. Is my research wrong on that?

Mr. **Shuy**. I do not even research that sort of thing or keep track of it. I do not know whether that has happened or not. Linguists do not——

Mr. **Anderson**. But you are not aware of any? At least at this point, I can safely rely on my search confidence, but you will not——

Mr. **Shuy**. Well, if there have been, I do not know about them. Let us put it that way.

Mr. **Anderson**. But there are some decisions in appellate courts which approved in application the rule which excluded this testimony, are there not?

Mr. **Shuy**. I do not know.

Mr. **Anderson**. The Kupau decision?

Mr. **Shuy**. Oh, you mean was I excluded from testifying?

Mr. **Anderson**. Testifying in an appellate court——

Mr. **Shuy**. Yes.

Mr. **Anderson** [continuing]. No decision saying that was——

Mr. **Bryant**. Mr. Chairman, the House objects to the testimony. It is designed apparently to argue that this witness's direct testimony is inadmissible. We have already argued that before the committee, and the committee ruled in favor of its admissibility.

Mr. **Anderson**. May I respond?

The **Chairman**. I will permit the line of questioning. I do think it goes to the weight of the evidence that the committee determines to give to Dr. Shuy's testimony.

Mr. **Anderson**. Now, Dr. Shuy, again, if I understand you and if I am reading your resume correctly, most of your testimony has been offered for the defense to show either that an analysis of recorded conversations shows that the defendant was entrapped, or that the structure of the conversations show that the defendant did not really intend to engage in the criminal transactions that were alleged. Is that a fair characterization?

Mr. **Shuy**. I believe it is.

Mr. **Anderson**. And that was your role in the case involving Senator Williams?

Mr. **Shuy**. I hesitate only on the word "entrapment" which I do not fully understand at all.

Mr. **Anderson**. I do not either.

Mr. **Shuy**. OK.

Mr. **Anderson**. But in the Senator Williams case, you were trying to demonstrate through conversational analysis that a series of conversations, apparently corrupt conversations that were recorded, in point of fact if you focused on Senator Williams' role you would find that he had not agreed to anything?

Mr. **Shuy**. That is correct.

Mr. **Anderson**. And, again, this may be a case of inadequacy in my research, but I have not yet been able to discover any cases in which you have testified that conversation analysis demonstrated that a specific conversation contained a secretive word code. Are there such case?

Mr. **Shuy**. There are cases I have worked on, but not ones in which I have testified on.

Mr. **Anderson**. So, again, this will be the first time you have testified in an adjudicative proceeding that on the basis of analysis of a 29-second conversation you were able to discern the presence of a hastily constructed partial word code?

Mr. Shuy. That is correct.

Mr. Anderson. Dr. Shuy, I also think you testified on Friday that there are four or five hundred linguists who study conversational analysis; is that correct?

Mr. Shuy. That was an estimate on my part.

Mr. Anderson. An estimate. I take it you are estimating. Does that include worldwide or just the United States?

Mr. Shuy. That would be in the United States. I would not have any way of knowing worldwide.

Mr. Anderson. And you testified last year before the House subcommittee chaired by Mr. Conyers, did you not?

Mr. Shuy. Yes, I did.

Mr. Anderson. And in response to a question by Mr. Conyers, I think you said that you doubted that any of those linguists would seriously contradict the opinions you expressed there and that you have repeated here. Do you recall that?

Mr. Shuy. Perhaps I said it that way. I do not recall.

Mr. Anderson. Would it surprise you to learn that the first linguist we called seriously contradicted the opinion you expressed?

Mr. Shuy. No, it does not surprise me.

Mr. Bryant. Mr. Chairman, that is hearsay, and it also testimony on the part of counsel. We object to the question and ask the committee to require him to bring forth his expert witnesses if he has them so that we may cross-examine them, but not to testify on their behalf.

Mr. Anderson. That is a two-part objection, Mr. Chairman. If I may respond?

The Chairman. Counsel will respond.

Mr. Anderson. I represent to this committee I have a good faith basis in fact for the questions I now propound on cross-examination. The decision as to whether we need a linguistic expert was contingent upon two things, in my mind: one, whether this committee was going to permit this type of testimony; and, two, when the day is done, I shall review with my colleagues whether there is enough left to warrant flying him up. But I represent there is such a linguist, that I am testifying on the basis of a good faith basis in fact. This is proper cross-examination.

The Chairman. The cross-examination will be permitted.

Mr. Anderson. Let me recapture myself.

Would it surprise you to learn the first linguist we called seriously contradicted the opinion you formed and the basis upon which you grounded it?

Mr. Shuy. What was the question? Am I surprised?

Mr. Anderson. Yes.

Mr. Shuy. I guess I am not.

Mr. Anderson. Well, would it surprise you that he concluded that the linguistic sample is so small that it is difficult to establish patterns that typically reveal a secretive code?

Mr. Shuy. No. I think I commented on the smallness of the sample.

Mr. Anderson. And would it surprise you that he concluded that, given the size of the sample and his analysis of your pre-filed remarks, "Professor Shuy's analysis, in my opinion, are plausible speculations rather than strong objective evidence"? To hear a confounding expert come forward and so say, would that surprise you?

Mr. **Shuy**. Now I have lost what you want me to be surprised about.

Mr. **Anderson**. Whether if you heard another expert linguist say that he thought your sample was too small and your conclusions were, at best, plausible speculations?

Mr. **Shuy**. No. Linguists tend to disagree with each other regularly at academic meetings, and I would not be surprised to see that happen in a court case, as it has in the past.

Mr. **Anderson**. Now, let me be sure I understand the data that was submitted to you for analysis. You indicated that the House submitted 12 recorded conversations, is that correct, at least in the first cut?

Mr. **Shuy**. The tapes that I had had more conversations on it than 12. The focus of my analysis was on 12.

Mr. **Anderson**. Now, you also indicated, I think, that you reviewed some transcript of Judge Hastings' testimony from the trial; is that correct?

Mr. **Shuy**. Yes.

Mr. **Anderson**. Did the House supply you with the pages of transcript where the prosecutor, Mr. Weingarten, argued to the jury that the October 5th conversation was coded?

Mr. **Shuy**. No. The pages were 2173 to 2192, and I do not remember anything——

Mr. **Anderson**. They did not supply you with Pages 2524 to 2528?

Mr. **Shuy**. No.

Mr. **Anderson**. Dr. Shuy, I was going to take you through the diligence used in preparing those transcripts, but I think that Mr. Bryant has already done that. So I think I will move along.

Now, Dr. Shuy, you had the 10 tapes involving conversations between Borders, Rico, and occasionally Dredge, and let me put them on one side.

Mr. **Shuy**. All right.

Mr. **Anderson**. And you had the two tapes that you have discussed here today.

Mr. **Shuy**. Yes.

Mr. **Anderson**. You did review and prepare transcripts of all 10 of those additional conversations, did you not?

Mr. **Shuy**. I reviewed and corrected Government transcripts, yes.

Mr. **Anderson**. But there were some transcripts that you prepared which appear to have been prepared, not corrections of the Government's but prepared by you.

Mr. **Shuy**. I think I should explain the procedure. I took the Government transcript, hand-wrote corrections on them. They were retyped by counsel, somebody in counsel's office. Then I saw those retypes and compared the original markings with those.

Mr. **Anderson**. That is very helpful.

Could I ask the clerk to give Dr. Shuy—I will not be moving into some of these transcripts—to supply him with a set of exhibits? I think the exhibits I have in mind—I know the exhibits I have in mind are 38B; 43B, the September 19th conversation; 50B, which is

October 2nd; 52B, October 4th; 53B, October 5th at 4:22 p.m.; 54B, October 5th at 5:52 p.m.; 56B; and 64B. I am sorry, and 65B.

Now, Dr. Shuy, just so I am clear. This may have come in or may be coming in this afternoon. On the series of tapes that are in evidence, let me ask you to look at House Exhibit 53B. That appears to be an FBI transcript of a telephone conversation that occurred on October 5, 1981, at 4:22 p.m.

Mr. SHUY. Yes.

Mr. ANDERSON. And did you prepare a transcript of that call, Dr. Shuy, applying the procedures you used?

Mr. SHUY. I will have to check.

Mr. ANDERSON. Well, if you would compare it with the transcripts immediately preceding it, let me ask you, is that a copy of the transcript you prepared?

Mr. SHUY. Yes.

Mr. ANDERSON. Now, is that a copy of the transcript you prepared or a copy of a transcript prepared by the FBI?

Mr. SHUY. At the moment, I could not tell you. I would have to look at my original to see if I marked it. It could be that there was no change on it. It could be that——

Mr. ANDERSON. Well, would you look at, on the top of the stack maybe, 43B.

Mr. SHUY. 43B. All right.

Mr. ANDERSON. Most of the transcripts which I had associated with your work bear a Roman numeral in the upper left-hand corner.

Mr. SHUY. OK.

Mr. ANDERSON. And in boldface type, the date, and appear to be typed in roughly the same format. Is that consistent with your recollection?

Mr. SHUY. The Roman numerals refer to the ones that I analyzed, is that what you are saying?

Mr. ANDERSON. Well, I am suggesting that the tapes that are listed in the exhibit book as having been transcripts prepared by Roger Shuy appear to appear in a very comparable format.

Mr. SHUY. Right. OK.

Mr. ANDERSON. And I am looking at a tape here which does not appear in that format.

Mr. SHUY. Right. Now, that is quite likely I did not do that one, then.

Mr. ANDERSON. Is there any way we can determine? That appears to be one of the 10 conversations that you say there was a transcript. And if there is a Roger Shuy-enhanced transcript available, I think I and the committee ought to have it as we talk about these conversations.

Mr. SHUY. Let me ask, you say this is not on the list that I had?

Mr. ANDERSON. I do not know whether it is on the list. I am saying that——

Mr. SHUY. I just do not remember the list. That is my problem.

Mr. ANDERSON. I am only looking at the House exhibit list, and this appears to be one of the series. I cannot find 10 conversations unless I include this one.

Mr. SHUY. Well, I do remember listening to this tape. I know that.

Mr. **Anderson**. Mr. Chairman, I do not want to make a big point, but if there is a transcript prepared by Dr. Shuy of that conversation, it would be useful if at some time before my cross-examination is complete I could have it. The contents are obviously not his assertions, but the transcript itself is a prior statement by him. To the extent there is an inconsistency in the evidence, it would be useful if it could be made available to me.

Now, even counting that transcript, Dr. Shuy, I only count myself as having received—and this is certainly not your fault—transcripts for nine of these ten conversations. You are confident you did do—you prepared transcripts for 10 conversations in which Judge Hastings was not a participant and two in which he was; is that correct?

Mr. **Shuy**. That is certainly my memory, yes.

Mr. **Anderson**. Again, Mr. Chairman, if there is a tenth transcript that has not been supplied to me that has been prepared by Dr. Shuy, I would appreciate receiving it.

Now, Dr. Shuy, I would like to try and see if we can share your expertise with the Senate concerning some aspects of these prior 10 tapes that you recorded. Now, these 10 tapes do establish a logically consistent context, do they not?

Mr. **Shuy**. I believe so, yes.

Mr. **Anderson**. Throughout, we are looking at tapes in which the participants appear to be mutually attempting to effect a corrupt deal?

Mr. **Shuy**. Yes.

Mr. **Anderson**. But these tapes contain significant departures from—when one gets into discourse analysis and the things you talked about Friday, these tapes themselves contain significant departure from normal conversational conventions, do they not?

Mr. **Shuy**. In what way are you referring?

Mr. **Anderson**. Mr. Chairman, I think it would help both Professor Shuy and perhaps the committee if we could at this point, so we would have some common ground for dialogue, ask that at least several minutes of House Exhibit 38B be played. If I might, just because I do not want to intervene with the Senators, I will sort of raise my hand when I think my examination can continue. But if any Senator wishes to have the whole thing run out, then I would be happy to allocate the time to that process.

The **Chairman**. If the technician would please play that, begin that 38B. Is that 38A?

Mr. **Anderson**. 38B. That is the September 12th, the initial meeting that occurred at Miami International Airport, some time after 8:00 a.m. It opens up with the line, "Bill, Frank, how ya doin?"

[A tape recording was played at this point.]

I.

September 12, 1981 8:05 a.m.

38B

UM: Bill, Frank, how ya doin?

HPR: How ya doin?

WAB: Hi, good to see you.

UM: I said, I said, Jesus Christ, ain't nobody on time.

WAB: You called him?

HPR: (Laughing)

UM: Yea, he wasn't there, you

WAB: I called at 7 and you had gone this morning.

UM: Yea, well, then, then I went and called, ah, I called her twice.

WAB: Yea.

UM: And she said that, ah, you tried, I said well, where's he at? She said restaurant, 7th floor.

WAB: Yea, yea.

UM: Okay, I'll leave you two guys together, you're in good hands.

WAB: Um hum.

HPR: Wanta have

WCD: Square your business up

HPR: a cup of coffee?

WAB: No, let's walk somewhere.

HPR: Okay.

UM: I'll talk to ya, talk to you dudes later.

WAB: You comin back or what? Let me leave this here.

UM: No. I wasn't thinkin on coming back. Do you need me for anything?

EXHIBIT
38b
HOUSE

WAB: Oh, I want to talk to you about some things.

UM: Okey doke. Well, where do you want to see me?

WAB: Why don't you just wait here, we'll get back to you.

UM: Alright.

WAB: Alright. How ya doin? What's your name again?

HPR: Frank Romano. Well, I've had some problems.

WAB: Um hum.

UM: Bill, see you later.

HPR: And I been going for a long . . .

WAB: Yea.

UM: Okay.

WAB: Huh?

HPR: . . . I was going for a long time and everything was going great.

WAB: Yea, I heard.

HPR: And then everything has fuckin' gone wrong and,

WAB: Um hum.

HPR: ah, the real problem is my, my wife has had a breast removed, a cancer and

WAB: Right.

HPR: And Jesus, ah, she just can't stand this, it's really, ah

WAB: Right. Um, I think we can help you.

HPR: I hope so.

WAB: I understand you had a problem, so you're a little leary about it.

HPR: Well, ah, I, I think that, ah, ah, lawyers have been, ah, ah, problems for me, too, you know. Just one of those things that, ah, ah, the breaks have been going against . . .

WAB: Yea.

HPR: . . . everything and, ah, taken some shots and, ah, I've been, ah, misled a few times.

WAB: Yea. OK.

HPR: So that it's, ah, really ah

WAB: Let me say this - I'm gonna make a statement, see what you say about it. I understand you lost some property, too.

HPR: Oh yes.

WAB: Ah, you know what the number is right?

HPR: Ah, I, I've heard it second hand. I haven't heard it first hand.

- Pause -

WAB: That what you hear?

HPR: Yes, one h . . .

WAB: Okay.

HPR: Right.

WAB: Now.

HPR: Right. You know as your, as you age by the way . . .

WAB: Yea.

HPR: . . . the, ah, print can become a smuckin' smaller.

WAB: Yea, I write bad anyway.

HPR: (Laughs) Within

WAB: Yea, within ten days the order will be signed.

HPR: Yea. Returning what?

WAB: Substantial . . .

HPR: Yea.

WAB: . . .amount.

HPR: Uh huh.

WAB: Then the other will follow after that.

HPR: What's the last word? (UI)

WAB: You lost some property, right?

HPR: Yea, oh, yea, right. Ah, he's okay, right . . . ?

WAB: And, ah

HPR: . . . okay, fine. Good.

WAB: And, the other will come once you file a motion for mitigation.

HPR: Okay, alright.

WAB: And that's the long and short of it.

HPR: Okay. That's, that's all, that's all, ah, great.

WAB: Um hum.

HPR: My only problem is, ah, you know, how do I . . .

WAB: Checks and balances?

HPR: . . . how do, how do I, how do I know . . .

WAB: Okay, let me

HPR: . . . that, ah, that . . .

WAB: That it won't be done

HPR: This is it, right?

WAB: Okay.

HPR: Okay, the only

WAB: No, wait a minute, let me just

HPR: Okay.

WAB: You can give it to Billy and what you do, once the first part of it done, then he will give it to me. I don't get nothin until the first part is done. You understand?

HPR: Yea.

WAB: Then after that, then that will show, that will be a signal showing you that I'm, I know what I'm talkin about, right? Right?

HPR: Yea, within, within ten days.

WAB: Yea.

HPR: Right.

WAB: Okay.

HPR: Ah, now, ah, my real, my, you know, the, the fuckin real problem I have . . .

WAB: Um hum.

HPR: . . . Yeah, is, is not the fuckin time for me, I mean I think I can do this.

WAB: I'm sayin that's both, both of you all.

HPR: Yea.

WAB: It's both.

HPR: And Tom.

WAB: Yea, yea, both.

HPR: Okay, because, ah

WAB: That's, I understand, not one, both.

HPR: Both.

WAB: Right.

HPR: Okay, now, do you want the, ah, how do you want that thing handled with, ah, ah, when this happens, will that trigger the whole thing or do you, or do you want, ah, to, ah, ah, I'd like to be, be in a, be in a position where, ah, there's, ah, something is down and something is at the end because it's, because the, the big problem is the fuckin time, you realize that.

WAB: I realize that.

HPR: Ah.

WAB: What I'm saying is this, I realize you have a problem, so that's why I say give it to him.

HPR: Oh, I got a real fuckin problem.

WAB: Yea, yea.

HPR: Ah, and, ah.

WAB: But give it to him . . .

HPR: Yea.

WAB: . . .within ten days then he will give it to me. I will hold it, till everything is done. But that way, you'll know, I don't want nothin till, so you could see, but I know him well enough, you give it to him, he says he's got it, within ten days the order will come down, then you know that because, don't want you filing a motion and withdrawin your appeal without knowin somethin gonna be done.

HPR: Yea, absolutely.

WAB: Okay.

HPR: Absolutely.

WAB: Right.

HPR: Absolutely.

WAB: Does that, that meet your satisfaction?

HPR: Well, the, ah, the ultimate goal is, ah, you know, just what I want . . .

WAB: Yea.

HPR: . . . that's, that's, ah, fuckin perfect. The only the, the only thing that I'm concerned about is, ah, ah, my, I can, I can handle Tom alright, there's no problem with that.

WAB: Um hum.

HPR: He's got to rely on my judgment.

WAB: Um hum. Um hum.

HPR: Ah, my re, ah, my knowledge of, ah,

WAB: Billy?

HPR: This partner, this, this person here is not, ah, the fuckin, ah, greatest in the world, you know, I don't have that kind of, ah,

WAB: Well, what do you suggest to do?

HPR: Well, I don't mind, ah, I don't mind handling it, ah, ah, without him, wh,

WAB: Okay.

HPR: Whether, the situation is that, ah, ah, what I'd like to do is have something where I would know for sure there was some kind of a, ah, ah, indication that I know you could do it, ah, say, I understand at one time, ah, when we were discussing this possibility of, a, we thought we had somebody that's gonna

WAB: Yea, I know, we don't really have to talk about it.

HPR: Yea, yea, yea, I betcha, you know, you get fuckin jerked off so many times, but anyway, ah, I think you had made the suggestion that, ah, we name a place . . .

WAB: Okay. No sweat.

HPR: . . . and a time . . .

WAB: Okay.

HPR: . . . and that, ah, that you, the jud, your, ah

WAB: That somebody would have dinner there.

HPR: Yea.

WAB: Okay, that's fine.

HPR: And he could order, ah, you know, something, we'd know that it

WAB: Okay.

HPR: In other words

WAB: Okay

HPR: We'd know that it.

WAB: Okay.

HPR: . . . would happen. The only thing is, now, how do I know, how am I gonna get to, ah, know, ah, ah, you know, when he's available for it, ah, do you want to call me and tell me when?

WAB: No, we can set that up now.

HPR: Okay, okay.

WAB: You name a place now. Wednesday of next week for dinner.

HPR: Wednesday of next week, okay. Okay, ah, how about, ah, ah, Vincent Capra's or, wa, wa, wait, how bout, how bout at the, ah, ah, any fuckin place I don't care. We can name some spot like, ah, Wednesday of next week, ah, there's a, ah, Chateau Gourmet that's right down.

WAB: Is this a clean joint, I don't want no place, you know.

HPR: Oh no, oh, no, no, no, no, no, no, no, no.

WAB: Name one of the better places in town you know.

HPR: Okay, there, your, your prob, the problem is there's so many fuckin places are closed in the off season, I'm tryin to make sure I don't give you a fuckin place that's closed on Wednesday, ah, there's a place, ah

WAB: What, what's, what's, what's one of the better, ah, hotels with a restaurant in it.

HPR: Ah, you can, ah, go to the, well, Fontainebleau or the, ah, Eden Roc or, er, ah, you can go to, ah, the, ah, how bout the Forge, the Forge Restaurant, ah, that's a little shady, ah, you stay out of there.

WAB: Yea.

HPR: Alright, the, ah, we can take a, ah, shot at, ah, um, ah, the, alright the main dining room in the, ah, Fontainebleau.

WAB: Okay, fine.

HPR: And when, that'd be Wednesday evening and would be, ah, let's say 8:00 or something like that?

WAB: 8:00.

HPR: Okay?

WAB: Um hum.

HPR: And, ah, why don't, why don't I give you a, ah, a number where you can reach me?

WAB: No.

HPR: Okay, okay, fine, fine, fine, okay.

WAB: I may not.

HPR: Alright.

WAB: That's, see

HPR: No, no, okay, okay.

WAB: Ah, okay, now

HPR: Well, I'm just sayin if somethin goes wrong...

WAB: He not gonna be around here.

HPR: ...oh, the other guy, okay, alright.

WAB: Now, ah, no, well, I just don't phones and stuff, you know.

HPR: Yea, I don't, ah, fuck, right.

WAB: Um.

HPR: I don't blame ya.

WAB: When do you want to see me after that's done?

HPR: I could see you, ah, probably, ah, Thursday, then the next day I'll, I'll

WAB: No, you can't do that, I'll be at the fight out in Vegas.

HPR: Oh yea. Okay, yea, you name it then, when's the, well, this is, this is going to, um, indicate to me that the rest is, is going to happen.

WAB: Right.

HPR: So that when the...

WAB: That's when I see you

HPR: ...when the, when the ten day is by, is gone, then I'm gonna see you.

WAB: No, see me up front, look, see that's why I was, you gotta

HPR: Put something up front.

WAB: Yea.

HPR: Right.

WAB: Right.

HPR: I will.

WAB: Yea. That's why I said when do you want to see me.

HPR: Okay, you tell me.

WAB: Ah, what about next Saturday?

HPR: Next Saturday, alright.

WAB: Okay.

HPR: Where?

WAB: Where would you suggest?

HPR: Well, make it uncomplicated, right here is alright with me.

WAB: Okay.

HPR: You know, it's just a fuckin, this is alright.

WAB: Okay.

HPR: Next Saturday, okay, and ah, then we, we should pretty near schedule anyway, something should happen within the, the, few days after that anyway.

WAB: Yea, yea.

HPR: And then, ah, the rest will follow. Now the, ah, okay, very good.

WAB: When you put (UI)

HPR: I just fuckin hope that this is, ah

WAB: Oh no. That's 100 percent, 100 percent, 100 percent.

HPR: Okay, okay.

WAB: What time?

HPR: Well, you're the person that has to travel more than me, you gi, you give me a time. I'll let you set it.

WAB: That's, at, 8:00 Wednesday night, 8:00.

HPR: 8:00, Wednesday.

WAB: Um hum.

HPR: At the, ah

WAB: Um hum, um hum. I know.

HPR: Right.

WAB: Right.

HPR: Okay.

WAB: Ah, I'll meet here 10:00.

HPR: AM?

WAB: Yea, here.

HPR: Okay, okay, very good.

WAB: Got to leave.

HPR: Okay.

* * *

The **Chairman**. Does any member of the committee want to hear the rest of this tape?

[No response.]

The **Chairman**. Counsel can proceed.

Mr. **Anderson**. Thank you, Mr. Chairman.

Now, Dr. Shuy, that tape establishes really the best context for those who would assess its meaning, does it not, in the sense that all of the pauses and everything that cannot be reflected in your transcript are present there?

Mr. **Shuy**. As far as I can tell, they are all present.

Mr. **Anderson**. And let me say that it would be your firm opinion here, as it was in the Williams case, that no one should undertake to analyze or evaluate these conversations without listening to them with considerable care themselves?

Mr. **Shuy**. Yes.

Mr. **Anderson**. And the transcripts follow the tape?

Mr. **Shuy**. Absolutely.

Mr. **Anderson**. But transcripts do aid us in going forward, and I wonder if we might look at page 2 of your transcript of that first meeting, House Exhibit 38B.

Mr. **Shuy**. All right.

Mr. **Anderson**. Now, the conversation irregularities that are present make it clear that both Borders and Rico have been so fully briefed they can virtually converse in what we might consider almost a code, does it not?

Mr. **Shuy**. I do not see evidence of code here. They appear to be versed in what they are talking about.

Mr. **Anderson**. And the suggestion is that they have been independently briefed on the deal that is going to be made so that they can talk, if you prefer, in shorthand?

Mr. **Shuy**. In indirectness and general, yes.

Mr. **Anderson**. And so Frank Romano, for example, suggests, "I've had some problems." Mr. Borders, rather than saying, "Oh, gee?" as I might to you, "What are they?"—"Um hum" and goes on, "Yea." "Okay." We then get disclosure that the real problem is his wife's breast cancer. Mr. Borders gives a totally inappropriate response for that kind of thing, indicating that both men know the problem that they are talking about in this meeting—the topic, if you will—has nothing to do with Frank Romano's wife's health problems.

Is that a fair summary of how one might——

Mr. **Shuy**. I believe that is fair, yes.

Mr. **Anderson**. And at the outset, Borders indicates that—confirms that he, too, knows that Rico—I will refer to him as Mr. Rico even though I gather Mr. Borders took him for Romano—that Rico/Romano may have been approached before, has something to be leery about other persons involved in this problem.

Mr. **Shuy**. Yes.

Mr. **Anderson**. Now, in conversation analysis, Dr. Shuy, fixed referrants are important, are they not?

Mr. **Shuy**. Yes.

Mr. **Anderson**. And when we used words like pronouns or references—"the other guy," "that person"—if we are to engage in meaningful conversation, I must assume and you must assume that we are using the same specific individual as the fixed referrants for our use of those terms. Did I get that right?

Mr. **Shuy**. That is very good, Mr. Anderson.

Mr. **Anderson**. Thank you, sir. So when we are examining a transcript like this, if we find repeated instances of use of words that call for a fixed referrant, we then need to in the context establish if we can determine what that referrant is?

Mr. **Shuy**. We can determine it grammatically or we can infer it, one or the other.

Mr. **Anderson**. And there are in these conversations several instances of that, are there not?

Mr. **Shuy**. Yes.

Mr. **Anderson**. And one candidate we might want to consider would be William Dredge, would it not be?

Mr. **Shuy**. A reference to William Dredge?

Mr. **Anderson**. This would be by inference rather than by conference, but it is clear that Mr. Dredge was present from this conversation, your first transcript, at the outset of the meeting.

Mr. **Shuy**. I do not know who was present. There is an unidentified male, but I do not know who it is.

Mr. **Anderson**. I will proceed on hypotheticals. If we assume that the unidentified male was William Dredge, it is clear that——

Mr. **Shuy**. William Dredge is present.

Mr. **Anderson** [continuing]. William Dredge is present.

Mr. **Shuy**. Yes.

Mr. **Anderson**. And it is clear that there is a side conversation between Mr. Borders and the unidentified male, Mr. Dredge, which results in an agreement that Dredge and Borders will have a meeting after the meeting between Rico/Romano is completed, is it not?

Mr. **Shuy**. Yes.

Mr. **Anderson**. So if we were going on an inferential basis, we have at least one person who is a candidate for the fixed referrant for use of otherwise ambiguous terms like "guy," "him," throughout conversations between these two gentleman?

Mr. **Shuy**. Yes.

Mr. **Anderson**. We have not proved it yet, but we need to think about that. And just looking at this first conversation, on page 4, for example, there is a reference to "that fellow." That, I take it, would be the kind of thing which calls for a fixed reference and in which the parties have to assume they are referring to—that they each know what it refers to?

Mr. **Shuy**. I do not see the reference right offhand.

Mr. **Anderson**. Well, let me see if I can find it.

Mr. **Shuy**. It talks about giving it to Billy. Perhaps that is what you are referring to.

Mr. **Anderson**. One moment, Mr. Chairman.

I am sorry, Dr. Shuy. I am confusing you there. The reference to Billy we might infer is a specific reference to Mr. Dredge, if we knew his name was William.

Mr. **Shuy**. All right.

Mr. **Anderson**. But let me move you forward. I misspoke. If you would look at House Exhibit 43B and page 4 of that, and that is where my notes misled me to.

Mr. **Shuy**. Oh, yes. I see it.

Mr. ANDERSON. Now, we are looking at the conversation that occurred the following week on September 19th at the airport. This is the meeting which at least conversationally indicates that the $25,000 down payment is being passed, and they are discussing how to make the arrangements for the payoff. In that context, Borders says, "My understanding was," you were going to put up a big escrow, and Rico responds, "that would be fine if we had one person that we had mutual confidence in." Mr. Borders says, "You don't have confidence in that fellow?"

Mr. SHUY. Right.

Mr. ANDERSON. "That fellow," I take it, has to have a referrant that both Mr. Rico, or that Mr. Borders at least believes that he and Mr. Rico know what he's talking about?

Mr. SHUY. It should, yes.

Mr. ANDERSON. And if we go on to the next page, they are still negotiating about whether the whole amount should be put up as the balance of the payoff or whether there should be further steps. And Mr. Borders makes as one of his arguments about—I do not have the number, but about the top of page 5, I think what you would call the fourth transaction, statement by Mr. Borders, "that's two. No No * * * that's to, that just to compensate 'cause the others guys gotta be having twenty." Do you see those words there?

Mr. SHUY. Yes. Yes.

Mr. ANDERSON. Now, "other guys" would be a critical reference here, would it not?

Mr. SHUY. It would.

Mr. ANDERSON. It is a fair inference that there is a third participant in this transaction who has got to get 20?

Mr. SHUY. That is correct.

Mr. ANDERSON. Given the fact that we are talking in terms of ones, 50's, 25's, and payoffs, someone else in here has got to get twenty. Is that a fair——

Mr. SHUY. That is fair.

Mr. ANDERSON. Can we tell thus far, based on your analysis, who the other guy is who is referred to in this conversation?

Mr. SHUY. You would have to infer. There is no specific to it.

Mr. ANDERSON. And if we were to infer, do we have any other logical candidate other than William Dredge thus far, if you assume I am correct in my representation that unidentified male means William Dredge and Billy means William Dredge?

The CHAIRMAN. Counsel, we will permit this line of questioning, but I do think we need to stop short of asking this witness to tell us the meaning of the conversations. We worked hard to keep him from telling us the meaning of this October 5th conversation, and I do not think it is really appropriate to ask him to testify as to the meaning of these conversations either, considering that he is not a witness as to any of the facts.

Mr. ANDERSON. Two things, Mr. Chairman, just by way of response, and I certainly will try to observe your rulings. I thought I fought very hard to enforce your ruling on Friday, and I thought I had lost most of my objections. More importantly and more critically, the witness has testified this morning that he has never been permitted to testify to the presence of a code in a conversation in his entire experience in testifying and the only areas he has been permitted have been based on analyzing the kinds of conversational analysis we are doing now. I think his qualifications are considerably different in that no tribunal anywhere has gotten into hastily constructed partial word codes, where in the Williams case and elsewhere the kind of dialogue I am engaged in with Dr. Shuy is comparable to what he was permitted to testify there.

I will honor the chair's ruling, but if there is objection and if the chair rules, I would hope you would keep that in the back of your mind.

The **Chairman**. Proceed. The witness can answer to the extent that he has expert knowledge that helps him to answer these questions, but I do think that perhaps some of the questions are getting into areas that really are not the subject of any expert knowledge.

Mr. **Anderson**. Well, let me try and confine myself; control myself I sometimes think may be the word.

In that context, the "other guy" has to have a fixed reference. It means somebody.

Mr. **Shuy**. It should mean something to both of them, yes.

Mr. **Anderson**. And in that context, twenty has to have a meaning that is understood by both men?

Mr. **Shuy**. Yes.

Mr. **Anderson**. And that is confirmed by the fact that H. Paul Rico immediately says, "Yea, right"? He is not expressing——

Mr. **Shuy**. Yes.

Mr. **Anderson**. If for some reason you said "other guy" to me, "20," I might respond, "Who?"

Mr. **Shuy**. Exactly.

Mr. **Anderson**. Or I might say, "20 what?" There is no such response or indication that Mr. Rico does not know exactly what is going down here.

Mr. **Shuy**. That is correct. He gives indication of knowing it. Whether he knows it or not, I do not know. But he gives indication of it.

Mr. **Anderson**. Now, I do not want you to interpret, so let me give my interpretation and just correct me, because this is not what I really want to get to. It is basically getting to it.

In this conversation, by the end of it, these two men have established that an order is coming out by September 30th and they are going to meet again on October 3rd for a payoff. Am I correct in that?

Mr. **Shuy**. My memory of it is——

Mr. **Anderson**. That appears to be, as you would call it, the topic by topic.

Mr. **Shuy**. Yes. My memory——

Mr. **Anderson**. You would agree that there is no neutrality here, no neutral response, that that is an agreement made?

Mr. **Shuy**. That is my memory of it, yes.

Mr. **Anderson**. Well, against that background, Dr. Shuy, let me move now to some of the conversations, the taped telephone recorded conversations. These two conversations you have analyzed establish, at least as our presumptive context, that the recorded conversations occurred because no order was issued by September 29th, and we are now having conversations to find out why.

Mr. SHUY. That is a fair statement.

Mr. ANDERSON. Let me ask you, Dr. Shuy, if you would look at House Exhibit 58B. That is your transcript for a call on October 2nd.

Mr SHUY. Sorry, Mr. Anderson. I do not have a 58B.

Mr. ANDERSON. I am sorry. 50B. That transcript has got Roman numeral III at the top of it.

Mr. SHUY. Yes.

Mr. ANDERSON. And in your transcript, in response to Borders' first inquiry, Borders indicates that Rico's man, "Your man should've told you," again, that is a incidence of something which has to have a fixed referrant, is it not?

Mr. SHUY. Yes.

Mr. ANDERSON. So if this is normal conversation, Borders assumed and Rico either accurately or Rico is appearing to assume that there still is a stranger who is passing information; there is a man out there who has a role to play?

Mr. SHUY. Yes, only I think you said it was Mr. Borders who talked about the man. It was Mr. Rico, I believe.

Mr. ANDERSON. I am sorry. I am looking now——

Mr. SHUY. About three inches down on the first page.

Mr. ANDERSON. I think what you would seven transactions into it, HPR says, "What's happened?" And WAB says, "I think it has. Your man should've told you."

Mr. SHUY. Oh, yes. You are right. You are right.

Mr. ANDERSON. Now, if we could direct your attention to 53B, this is the one that does not look like it is a Professor Shuy transcript, but nonetheless it is the one that we have. This is the call that was transcribed as having occurred on October 5th at 4:22 p.m.

Mr. SHUY. Yes.

Mr. ANDERSON. Are we looking at the same?

Mr. SHUY. Yes.

Mr. ANDERSON. And in that call, at page 2, Mr. Borders assures—Bill, I take it, assures Frank—Rico—that the matter has been taken care of; is that correct?

Mr. SHUY. Yes.

Mr. ANDERSON. And he goes on to say, on the next page, "Your friend should tell you something. Where . . . you went you say you went before." Again, there is a use of "friend" in a term that must assume that both men have a common fixed referrant for the friend?

Mr. SHUY. I would say should, but yes.

Mr. ANDERSON. Well, I take it in ordinary conversation you would expect, if there was any ambiguity, me to say either, "Which of my many friends, Dr. Shuy?" or "I didn't know I had any," whichever may be closer to the truth. But if I did not know what you meant when you said "Your friend should tell you something," that would call for a response seeking clarification.

Mr. SHUY. It would call for it, but in normal conversation, unfortunately, we do not often do that, largely because we are only allowed so many opportunities to request clarification before we are thought to be a poor conversationist. And so many times people abstain from requesting clarification, which is why I hesitate to say "must."

Mr. **Anderson**. That is why lawyers are thought to be such poor conversationalists, because they persist in it. This, however, is more than merely use of a referrant. Borders actually defines the common fixed referrant, does he not?

Mr. **Shuy**. For "friend"?

Mr. **Anderson**. "Your friend should tell you something. Where . . . you say you went before." He is giving him not only the friend as reference but saying——

Mr. **Shuy**. More information about it.

Mr. **Anderson**. More information about it, something that says this is important information I am giving you now.

Mr. **Shuy**. Yes.

Mr. **Anderson**. Now, there should be, then, we should be able to find inferentially logical referrants for "other guy," "your man," "your friend," et cetera. That is one of the things that at least your analysis of these conversations says we should be looking for.

Mr. **Shuy**. You should.

Mr. **Anderson**. And I will not ask you to interpret for us.

Now, while we are on Exhibit 53B, Dr. Shuy, were you concerned in terms of measuring the context and the possible contamination by the fact that this conversation occurred at 4:22 p.m.?

Mr. **Shuy**. As opposed to what? I am sorry.

Mr. **Anderson**. Well, let me clarify. At 4:22 p.m. on October 5th, Borders has assured Rico that the matter has been taken care of, has he not?

Mr. **Shuy**. Yes.

Mr. **Anderson**. And the first conversation you get from Judge Hastings occurs at 5:12 that afternoon.

Mr. **Shuy**. That is correct.

Mr. **Anderson**. Now, if the matter has been taken care of, this portion of the conversational agenda and this topic has been addressed, has it not?

Mr. **Shuy**. It has.

Mr. **Anderson**. There is no need for further discussion if I have taken care of it. We have done it.

Mr. **Shuy**. Assuming the truth of what is being said, yes.

Mr. **Anderson**. Well, but Borders is the one who does the saying to Rico; is that correct?

Mr. **Shuy**. Yes.

Mr. **Anderson**. And he says so in no uncertain terms?

Mr. **Shuy**. He says that, yes.

Mr. **Anderson**. Then you have a conversation that does not come until after this which has a facially innocent explanation that appears to refer to a totally different context?

Mr. **Shuy**. That is correct.

Mr. **Anderson**. There is a logical inconsistency in that under some interpretations these two people are discussing a topic which is unimportant because it has already been addressed 50 minutes earlier. That would be a logically inconsistent conversation pattern, would it not?

Mr. **Shuy**. Now, you have lost me in your referencing, Mr. Anderson. "These two people" are in which conversation?

Mr. **Anderson**. Now, I have lost myself, and I suspect if I have lost both of us, the committee may not have it.

4:22 p.m., Mr. Borders and Mr. Rico have a conversation which conversationally appears to close down a topic.

Mr. **Shuy**. Yes.

Mr. **Anderson**. The matter has been taken care of.

Mr. **Shuy**. Yes.

Mr. **Anderson**. "Your friend should tell you" about it.

Mr. **Shuy**. Right.

Mr. **Anderson**. At 5:22, or 5:12, there is a conversation between two different participants, Judge Hastings and Mr. Borders, in which Judge Hastings talks about "letters for Hemp."

Mr. **Shuy**. Yes.

Mr. **Anderson**. If Borders did not know at 4:12 that the matter had been taken care of, you would expect that he would require a conversation before he gave the assurance, would you not?

Mr. **Shuy**. At 4:12?

Mr. **Anderson**. Let me reverse the question. If Borders did know at 4:22 that the matter had been taken care of, he would need no further reassurance from anyone.

Mr. **Shuy**. If he were telling the truth. There is a truth condition on all the conversation.

Mr. **Anderson**. Oh, I recognize that there is a truth condition in just about everything in this case. But as a matter of conversational analysis when we are applying the standards of logical consistency——

Mr. **Shuy**. Yes.

Mr. **Anderson** [continuing]. The disclosure of information necessary to make a representation should precede the representation.

Mr. **Shuy**. I see what you are saying.

Mr. **Anderson**. And as a matter of logical consistency, one should not make a representation until one has received the information necessary to make the representation?

Mr. **Shuy**. That is logical.

Mr. **Anderson**. And in that sense, there is a logical inconsistency, however much you want to—however you want to treat it, in the sequence in which these conversations were presented in the context that is apparently being established? There is a logical inconsistency?

Mr. **Shuy**. In terms of Borders on October 5th should have, if I can characterize what you are saying, might have said, "This is settled." I do not know why he would say that, though. I am——

Mr. **Anderson**. I mean, in all of the other conversations you asked for, he is giving appropriate logical responses: "I have not been able to check it out yet"; "I am working on it"; "I'll get back to you"; "Why don't you call me?" Here, firmness: "It has been taken care of."

Mr. **Shuy**. To Rico, yes.

Mr. **Anderson**. And it is logically—there is a logical inconsistency including the later call in this pattern? That is the only point I am trying to make.

Mr. **Shuy**. I see where you are going.

Mr. **Anderson**. And would I, if I were in class, at least get credit that there is a logical inconsistency and I found it?

Mr. SHUY. I think you have.

Mr. ANDERSON. As you can see, the yellow papers are gone, so we are now back to a new topic.

Dr. Shuy, you are, in fact, the leading proponent of the use of conversational analysis in adjudicative proceedings in this country, are you not?

Mr. SHUY. I do not know about "proponent". I use it a lot. I do not make speeches about how one ought to use it.

Mr. ANDERSON. You are a believer?

Mr. SHUY. I think it is an excellent way to analyze conversation.

Mr. ANDERSON. And the techniques and methods of conversational analysis extend far beyond those that were necessary to the conclusions you reached on Friday?

Mr. SHUY. There are many techniques in conversation analysis.

Mr. ANDERSON. For example, in the Williams case, you discussed techniques of coaching as a strategy by which a person might achieve his agenda or goals in conversations?

Mr. SHUY. I did.

Mr. ANDERSON. And in your analysis there, you were able to identify what appeared to be specific instances of coaching?

Mr. SHUY. I did.

Mr. ANDERSON. Now, I take it that testimony in a courtroom is a form of conversation, albeit somewhat formal?

Mr. SHUY. It is a form of con—there is some disagreement on whether it is conversation or interviewing. But it is in the oral production of language discourse.

Mr. ANDERSON. And I take it the techniques, once you have classified it, there are techniques you have described, could be used in a case to determine the likelihood that witness testimony was the product of coaching as opposed to the product of straightforward recall?

Mr. SHUY. There should be a way of getting at that question, yes.

Mr. ANDERSON. Well, let me try this, for example. In normal discourse, the listener typically listens to a question before providing an answer.

Mr. SHUY. That is correct.

Mr. ANDERSON. And I take it it would be even more likely in a conversation between persons who are not well acquainted?

Mr. SHUY. You would listen very carefully, yes.

Mr. ANDERSON. And I take it that it would be almost certain in an important informal conversational transaction of the kind that occur when a witness is questioned and responds under oath in a formal proceeding?

Mr. SHUY. Yes. I try very hard to listen to your questions.

Mr. ANDERSON. And you have done a marvelous job.

So I take it that if a witness began to answer a question before the question was complete, that would be some evidence that there had been some coaching or something had gone on before?

Mr. SHUY. It would be evidence of that among other things, including anticipation. It would be very unusual in a court proceeding.

Mr. ANDERSON. Well, you also indicated that pause fillers are evidence that a speaker is struggling to choose the correct words?

Mr. SHUY. Yes.

Mr. **Anderson**. One function.

Mr. **Shuy**. Being careful.

Mr. **Anderson**. And they may also indicate that the speaker is having difficulty recalling an event?

Mr. **Shuy**. That is correct.

Mr. **Anderson**. For example, Dr. Shuy, what day of the week was it that you testified before Mr. Conyers' committee?

Mr. **Shuy**. Uh, uh, uh——

Mr. **Anderson**. It may also indicate that the speaker recognizes that the selection of the correct word or phrase may be a matter of importance in the context of the specific conversation that is taking place?

Mr. **Shuy**. That is right.

Mr. **Anderson**. And, thus, we would in formal testimony under oath expect that to be a factor that might affect the speed and facility with which a witness responded?

Mr. **Shuy**. I would, indeed.

Mr. **Anderson**. And I take it that where a person is asked to recall ancient events for serious purposes pauses and pause fillers should be expected?

Mr. **Shuy**. You might expect them, yes.

Mr. **Anderson**. And if I could summarize how a conversationalist might express it, I take it hesitant responses, replete with pause fillers, might be a characteristic indicating an honest witness struggling to cope with the difficulties of recollection and the demand for precision?

Mr. **Shuy**. Yes.

Mr. **Anderson**. Such a response would indicate the absence of rehearsal or coaching? Indicate not——

Mr. **Shuy**. It would indicate.

Mr. **Anderson**. In contrast, the absence of pause fillers in confident assertions of detailed responses concerning events that occurred in 1981 might be another indication that there had been some rehearsal and coaching going on?

Mr. **Shuy**. I am not sure that that would—maybe I did not follow your question accurately.

Mr. **Anderson**. Well, if there were no pause fillers and there were rapid-fire responses, giving detailed descriptions of 1981 events in a proceeding that was taking place in 1989, we would at least have ground for scrutiny there, would we not?

Mr. **Shuy**. Or either coaching or the person on his own simply memorizing things, as I did the page numbers of the transcript.

Mr. **Anderson**. Well, that is quite correct because context is extraordinarily important in making an assessment such as this. And I take it—my point exactly, one might expect the FBI or the case agent to be so thoroughly familiar with his record that even eight years after the fact he could be fairly quick in responding?

Mr. **Shuy**. That is a possibility.

Mr. **Anderson**. And so, too, one might expect an expert witness like yourself, where basically the questions have been written based on opinions that you have made, that you are going to have less trouble in struggling for recollection in a proceeding than might an ordinary lay person?

Mr. BRYANT. Mr. Chairman, the House will object to any attempt to get Mr. Shuy to characterize the testimony of witnesses about whom he has not been asked to testify. It is way beyond the scope of the direct examination, and it is way beyond the permissible scope of an attempt to show flaws in the theory of linguistics or to show flaws in the application of that science to the October 5th and 8th conversations. If that is where the gentleman is leading, we will object——

Mr. ANDERSON. May I be heard?

Mr. BRYANT [continuing]. To allowing him to——

Mr. ANDERSON. May I be heard, Mr. Chairman?

The CHAIRMAN. Counsel can explain where this line of questioning is leading.

Mr. ANDERSON. It is going exactly where Mr. Bryant is concerned it is going. What I submit is we have not been applying the Rules of Evidence. We have an expert witness in conversation. The Chair has ruled he is expert. I will continue with hypotheticals. I can keep out the words. But I think we have a principle that has been applied, somewhat to the respondent's detriment, that all evidence that might aid the Senate in any way in evaluating this record should be before it. You have here an expert who has aided the Senate before. He is available now. I ask leave to let him aid the Senate now, and I think that is consistent with the Chair's rulings on evidentiary principles throughout.

That is my request. I can live with rules either way, but I think we have been very liberal today in dealing with my objections. I would ask you to be the same in dealing with the House's.

The CHAIRMAN. The objection is overruled for the time being, and counsel can continue as long as he continues to call upon the witness to give expert advice on general issues. Obviously, if he is calling on the witness to characterize facts the witness is not aware of, then I think that would——

Mr. ANDERSON. So you and I can be clear, so I do not go down a wrong trail unintentionally, I had understood that one of the things that experts were entitled to do was have hypotheticals posed to them and see if they could—and the hypotheticals may be concrete. I am not going to ask him to characterize something he has not read, and I am confident Dr. Shuy would not.

The CHAIRMAN. Cross-examination can continue.

Mr. ANDERSON. Thank you, Mr. Chairman.

But absent an FBI case agent or someone similarly familiar with the record or an expert witness, one might expect lay persons, at least, to have the characteristics we have described; is that——

Mr. SHUY. You will have to remind me what they are now. We have lost——

Mr. ANDERSON. Pause fillers, a certain amount of struggling for recollection, and that kind of—waiting until the question is done before it is answered.

Mr. SHUY. Well——

Mr. ANDERSON. And in that context, it would be useful if we were dealing with such lay persons, in order to set their remarks in context, to have statements they had made about the events on prior occasions to compare, if we were going to do a conversational analysis of this?

Mr. Shuy. Conversation analysis would analyze the conversation. If there were conversations before and now, one would make analysis of both of them.

Mr. Anderson. But they might establish a context? Let me give you some hypotheticals and see if I am right on this.

Let me, for example, ask you hypothetically: Would it be unusual for a witness to claim in 1985 that his recollection was hazy about events and their timing in 1981?

The Chairman. Counsel, that question is not going to be permitted. I do not think it requires an expert to testify on the question of the length of time people remember. I think the committee is competent to make that judgment without the aid of expert testimony.

Mr. Anderson. Mr. Chairman, I will honor your ruling, but I did not think it was necessary to aid a reasonable group of people to listen to a conversation and figure out what it meant. And I lost that one. I will honor the ruling. I will move on. But I take it the point of the extent to which we should have expertise in any of these areas is a matter that ought to be of some concern to the Senate. And that troubles me. I just——

The Chairman. The ruling has been made that this witness can testify as to the code nature of the conversation. He has done so. You have cross-examined him on that. But we will not permit him to just testify on matters that a lay individual would have as good an opinion on.

Mr. Anderson. Well, Dr. Shuy, in the Williams case—and I am recapping here in part; we are almost through with our conversation. In the Williams case, you emphasized the danger of using written transcripts as substitutes for listening to the spoken word?

Mr. Shuy. I did.

Mr. Anderson. That would apply to recorded testimony as well as other kinds of conversation?

Mr. Shuy. Testimony? The transcript of——

Mr. Anderson. If someone was only going to hear testimony in recorded form, it would be important for them to listen to it or, if it was videotaped, to watch it as well as simply reading the printed word.

Mr. Shuy. Yes, that would apply to——

Mr. Anderson. Thus, for example, all of the "uhs" that my associate discovered had been gracefully removed by the reporters when they reported your testimony, and you would not catch that just on plain written words. Is that correct?

Mr. Shuy. I do not know what has been recorded by the secretary, so I could not tell. I have not seen a transcript.

Mr. Anderson. Well, how many hours of recorded conversations did you review in the Williams case?

Mr. Shuy. Oh, it was something like six conversations in which Williams existed. Now my memory is gone as to exactly how many hours all together.

Mr. Anderson. A rough estimate, and I promise I will not check.

Mr. Shuy. Oh, my—including all tapes relevant—there were numbers of tapes in which Williams was not present. But with Williams present, it would be some three, four hours, I am sure.

Mr. Anderson. With all the tapes——

Mr. Shuy. Oh, many more hours than that.

Mr. ANDERSON. And how long did it take you to do a careful analysis of what you had heard?

Mr. SHUY. That was a particularly unusual set of circumstances. I had never been involved in anything like that before, and it required a lot of meeting time with various people. I ultimately estimate something like 40 days of my life were spent on that case.

Mr. ANDERSON. Well, I do not know how many meetings there will be with people, but in your expert view, how long should it take to conduct a careful and accurate review of 76 hours of videorecorded testimony and the thousands of pages that that would generate?

Mr. SHUY. If it is video, it takes longer than audio because there is more information. If it is body-mike meetings, it takes considerably longer than telephone conversations. So the estimate would have to be based on what kind of——

Mr. ANDERSON. Well, in Williams, you called upon the Senators to conduct a careful review and analysis themselves; is that correct?

Mr. SHUY. That is correct.

Mr. ANDERSON. And your testimony based upon your 40 days of analysis only focused upon one aspect of that case, an important one but one aspect?

Mr. SHUY. Well, I do not know that I would label it as one aspect.

Mr. ANDERSON. A very significant one.

Mr. SHUY. But a limited.

Mr. ANDERSON. Now, I take it you were not calling upon the Senators to give up 40 days of their lives to do what you had done?

Mr. SHUY. I do not think there would be much point in that.

Mr. ANDERSON. But when you were urging the Senators to listen and be careful in their review and analysis, here we are going to have 76 hours. Do you have some advice for the Senators as to how long a careful review of that kind would take?

Mr. SHUY. Well, it takes me about three times the length of the tape to do the tape correction and analysis. But I am doing a minute linguistic analysis of these things following many analytical routines. Certainly more than one—certainly a listening to all of them I would recommend and, if possible, a second listening. And for particular passages, more than that.

Mr. ANDERSON. Now, Dr. Shuy, you testified there are four or five hundred linguists in the country; is that correct?

Mr. SHUY. Oh, there are more than that. There are more like six or seven——

Mr. ANDERSON. Of those involved in conversation analysis.

Mr. SHUY. That was my estimate, although there is no figure on that.

Mr. ANDERSON. But there are only a dozen or so, to your knowledge, who employ their skills as witnesses in criminal cases?

Mr. SHUY. Again, we do not keep records of these things, but I am again estimating, yes.

Mr. ANDERSON. Well, you are recognized as the one who does this most frequently?

Mr. SHUY. As far as I know.

Mr. **Anderson**. And it is true that your skills in conversational analysis are only called upon when a party desperately wants to persuade a fact-finder that the recorded conversation does not mean what it apparently says?

Mr. **Shuy**. I could not characterize the desperation on the part of the people who call me, Mr. Anderson.

Mr. **Anderson**. Well, ordinarily, if everyone agrees that a conversation is what it purports to be, they would not call upon you; is that correct, sir?

Mr. **Shuy**. I think there would not be a problem. There probably would not be an indictment.

Mr. **Anderson**. So in that context, it is ordinarily the party who wishes to have a conversation to be something other than what an ordinary juror or a person would see it as, they call upon you?

Mr. **Bryant**. Mr. Chairman, we object. He is characterizing the content of the conversation.

Mr. **Anderson**. I am not characterizing any conversation in this case. This man has testified 14 times.

The **Chairman**. The witness will be permitted to respond to the question. The objection is overruled.

Mr. **Shuy**. I will try to respond in this way, Mr. Anderson: I am called regularly by attorneys who have a case. They have tapes in the case, often. Sometimes they send me the tapes, and I say to them get the best plea bargain you can get because there is nothing I can do for this. Occasionally, or often, there are parts of a set of conversations in which some good things can be said for the defendant, even though some bad things are still there. Occasionally, a defendant's case can be aided considerably by seeing the analytical routines that I use.

Mr. **Anderson**. But I take it that the only cases where you are actually called by the lawyer to come forward and testify are those cases in which your opinions reach a conclusion that this conversation is not what it otherwise might appear to be?

Mr. **Shuy**. I would not think there would be much point in going to court with me if that were otherwise.

Mr. **Anderson**. To use two illustrations, after Senator Williams had been convicted in the courts, you were called upon to persuade the Senators that a series of apparently corrupt conversations were, in fact, not what they seemed?

Mr. **Shuy**. That is correct.

Mr. **Anderson**. And long after Judge Hastings has been acquitted, you have been called upon to persuade Senators that a seemingly innocent conversation is not what it seems?

Mr. **Shuy**. I believe you could say that, yes.

Mr. **Anderson**. And that, in fact, is the nature of your practice?

Mr. **Shuy**. Of my practice?

Mr. **Anderson**. Well, that is the kind of thing you do routinely?

Mr. **Shuy**. I do this routinely, yes.

Mr. **Anderson**. Persuading things that they are not what they seem?

Mr. **Shuy**. That is a gross mischaracterization.

Mr. **Anderson**. I agree with you, Dr. Shuy. I withdraw the question.

I have no further questions, Mr. Chairman.

The CHAIRMAN. Is there redirect examination of Dr. Shuy?

Mr. BRYANT. Yes, there is, Mr. Chairman. Before Mr. Anderson takes his seat, we would like to ask the committee to require Mr. Anderson to declare in open court, open committee, the name of the linguist that he referred to when he said he made his first call at the beginning, and the name of the second, third, and fourth or any other linguist that he might have called before posing that question on cross-examination.

Mr. ANDERSON. I would be happy to do so. Roger Baldwin.

Mr. BRYANT. We would like to have the address and the phone number as well, Mr. Anderson.

The CHAIRMAN. Would you please just supply that to both the committee and to counsel?

Mr. ANDERSON. I will supply Dr. Baldwin's professional opinion analyzing it for the consultation of the committee and for the consultation of Mr. Bryant.

REDIRECT EXAMINATION

Mr. BRYANT. Mr. Shuy, in the course of cross-examination, Mr. Anderson had you examine a number of conversations in which there were multiple pause fillers; that is, "ahs" and terminology such as "uh." Do pause fillers alone indicate a code is being used?

Mr. SHUY. No, they do not.

Mr. BRYANT. In fact, in order to find the presence of a code, you have to find a number of factors, anomalous factors such as pause fillers at the same time; is that not what you testified to earlier?

Mr. SHUY. Pause fillers and other features that we discussed.

Mr. BRYANT. What features are those, once again?

Mr. SHUY. Well, the pause fillers, the repeated words and false starts are pointers or indicators of the topic word which follows, which then is testable by whether or not there is logical inconsistency and whether or not there is request for confirmation. So these factors together form the basis of an opinion as to whether something is a partial word code or not.

Mr. BRYANT. And does the location of those factors in the sentence, at particular parts of the sentence, have a role in your decision or opinion that a conversation is a code or is not a code?

Mr. SHUY. Yes. The position before significant topic words, as I pointed out, usually nouns and verbs. "Ahs" occur, on the other hand, regularly at the beginnings of sentences as just pauses to indicate: I am about to start, do not interrupt me, I have the floor. They also occur at ends of sentences to indicate: I am going to be saying something else, but it is a place where you can interrupt me or change the subject if you want to, to the other person.

Mr. BRYANT. Now, with regard to one of the questions that you were asked during the course of cross-examination about your having pointed out in previous writings about the possibility of an inundation of tape recordings and speakers in the course of a particular case, when you were analyzing the conversations between or among the various figures who have played a role in the case, in your opinion in this case is there an inundation of tape recordings and speakers?

Mr. SHUY. The tape recordings that I have been given, it is on the short end, on the small end of amounts of tapes available. In cases I have worked on, there were some 60, 65 types in Delorean and many, many more in ABSCAM. And many cases I have worked on had far more tape recordings than this. This is possible to handle.

Mr. BRYANT. I would also like to ask you if the fact that the October 5th conversation is the eleventh tape recording in this investigation, does that alter your conclusion that that conversation was in code?

Mr. SHUY. No, it does not.

Mr. BRYANT. Why not?

Mr. SHUY. Because it says what it says. It has on it what it has on it.

Mr. BRYANT. It contains the——

Mr. SHUY. It contains the features that I indicated are indicative of candidate for code and the features which I indicated are the tests of whether it is or not.

Mr. BRYANT. Just to clarify for us, because I think there is some discrepancy in the two numbers that have been mentioned this morning, in how many cases have you testified?

Mr. SHUY. Fourteen Federal; eight State criminal cases; four, I believe, civil.

Mr. BRYANT. Has a court ever denied your testimony because it had to do with coded conversations?

Mr. SHUY. No.

Mr. BRYANT. Now, except for the Delorean case, in all of these cases was your expert testimony admitted into evidence?

Mr. SHUY. Yes, it was.

Mr. BRYANT. I would also like to ask you this: Were you, Mr. Shuy, sensitive to all the cautionary considerations that were applicable to the Williams case, such as the fear of contamination, when you did your analysis of the October 5, 1981, conversation and concluded that it was in code?

Mr. SHUY. Yes.

Mr. BRYANT. Mr. Shuy, is the data you received in this case enough to render an opinion about the nature of the October 5th conversation?

Mr. SHUY. In my opinion, it is adequate for that purpose.

Mr. BRYANT. Does the amount of data alter in any way your conclusion that the October 5th conversation is in code?

Mr. SHUY. No, it does not.

Mr. BRYANT. And with respect to the 11 other tape recordings in this case that respondent's counsel has asked you about here today, do any of these conversations employ a code in the same manner as the October 5th conversation?

Mr. SHUY. No.

Mr. BRYANT. And by this question, what I mean is: Do any of those conversations employ one topic in order to pass information about a completely different topic?

Mr. SHUY. No.

Mr. BRYANT. Turning to the tape recordings between William Borders and Paul Rico, by listening to those recordings were you able to determine that William Borders and Paul Rico are setting up and confirming a bribery deal?

Mr. **Shuy**. Yes.

Mr. **Bryant**. Turning to the September 12th conversation between Mr. Borders and Mr. Rico, is it possible that they are referring on page 5, when it states "other guys"—and let me just stop you there and ask you to refer to it.

Mr. **Anderson**. Objection, Your Honor. I have been fairly generous on redirect, but "Is it possible?" We are going to have expert speculation now?

Mr. **Bryant**. Mr. Chairman, he specifically asked an "is it possible" question about the specific line in the transcript and attempted to draw out from this witness testimony about whether or not it was possible that that was a reference to Mr. Dredge. I am simply rebutting that specific question.

The **Chairman**. I think the witness will be allowed to respond to a question about whether that is a possible interpretation based on what he knows, if he has an opinion on it.

What exhibit are you referring him to, counsel?

Mr. **Bryant**. Exhibit 38B, page 5.

[Pause.]

Mr. **Bryant**. We will come back to that question.

I would like to direct your attention to page 7 of the transcript I just mentioned, specifically to the 15th line down from the bottom.

Mr. **Shuy**. Page 7?

Mr. **Bryant**. Yes.

Mr. **Shuy**. All right.

Mr. **Bryant**. Is there a reference to "judge" at that line?

Mr. **Shuy**. No. There is the beginning of a word, "jud." I would hesitate to say that it is "judge."

Mr. **Bryant**. I would like to ask you to refer to Exhibit 43B at page 5.

Mr. **Shuy**. All right.

Mr. **Bryant**. It would be turn number four, William Borders, WAB talking that I am making reference to in this question. I would like to ask you, turning to that part of this conversation between Mr. Borders and Mr. Rico, is it possible, when he says, "that's two. No No No, that's to, that's just to compensate 'cause the others guys gotta be having twenty."

Mr. **Shuy**. I am sorry. What page?

Mr. **Bryant**. Page 5, Exhibit 43B.

Mr. **Shuy**. And it is line 4 of that?

Mr. **Bryant**. Turn four.

Mr. **Shuy**. Turn four.

Mr. **Bryant**. William A. Borders talking.

Mr. **Shuy**. Oh, I see. All right. Now I have lost your question.

Mr. **Bryant**. The question is this: Referring to that phrase which says that's "to compensate 'cause the others guys gotta be having twenty," is there anything in your analysis or examination of this transcript which would rule out the possibility that the other guy is Judge Alcee Hastings?

Mr. **Shuy**. No. The specific reference to the "other guys" is not made. You would have to infer that meaning, and I assume both parties in this conversation are inferring their intention. It is entirely possible to be that person that is referred to by Mr. Borders on other occasions.

Mr. **Bryant**. Mr. Shuy, is it consistent for linguistic analysis?

Mr. **Shuy**. It certainly is.

Mr. **Bryant**. And I wonder if this is the same speech pattern analysis for persons who are setting up a bribery deal, to speak indirectly about the topic of their conversation?

Mr. **Shuy**. It certainly is.

Mr. **Bryant**. And I wonder if this is the same speech patterns that a linguist would expect when studying a conversation between two friends who are writing letters of support on behalf of a third friend?

Mr. **Shuy**. No. It is not.

Mr. **Bryant**. Why is that?

Mr. **Shuy**. Well, in a conversation involving—well, in the conversations that we have before us involving Mr. Borders and Mr. Rico, Mr. Rico is seeing to it that it is being tape recorded, and I teach a course in interviewing in which one of the basic techniques to elicit information from the other person is to use indirectness in general expressions.

That forces the other person to be specific. So it is not surprising to me that Mr. Rico does that, regularly, in the conversations with Mr. Borders. Whereas, in the conversation of October 5th, which I believe was your comparison conversation—I am sorry. What was the question you were asking at that point now, specifically?

Mr. **Bryant**. Well, I asked you if it was consistent with linguistic analysis, for persons who are setting up a bribery deal, to speak indirectly about the topic of their conversation.

Mr. **Shuy**. Yes.

Mr. **Bryant**. And you answered that question yes.

Mr. **Shuy**. Yes.

Mr. **Bryant**. I followed that with a question about whether or not this was the same speech pattern that a linguist would expect when studying a conversation between two friends who ostensibly are writing letters of support on behalf of a third friend?

Mr. **Shuy**. No. You would not. Well, you could actually have some of that kind of conversation, let me say. The kind of indirectness that you would have, however, would be from shared understanding of—on some basis.

Mr. **Bryant**. Mr. Shuy, turning to the September 12, 1981 conversation between William Borders and H. Paul Rico, which is House Exhibit 38B——

Mr. **Shuy**. All right.

Mr. **Bryant** [continuing]. Do you find repeated words, false starts, and pause fillers in that conversation?

Mr. **Shuy**. Yes.

Mr. **Bryant**. Which one of the participants in that conversation, predominantly—of the two which one of them uses repeated words, false starts, and pause fillers?

Mr. **Shuy**. Mr. Rico uses many more of these than Mr. Borders.

Mr. **Bryant**. In fact Mr. Borders uses them very seldom in that conversation, is that not correct?

Mr. **Shuy**. Very seldom.

Mr. **Bryant**. If I were to proffer to you the fact that Mr. Rico is actually an undercover agent playing the part of Frank Romano in order to set up the bribery deal, would it be consistent with linguistic analysis for Mr. Rico to use repeated words, false starts, and pause fillers in this situation?

Mr. **Shuy**. Yes, it would because he is eliciting the information from Mr. Borders, and in the process—as I indicated—he would be indirect. He would be choosing his words extremely carefully. He would want to be able to not scare Mr. Borders off by being too explicit, so he would use general words. This is a practice generally followed by FBI agents, as a matter of fact, in such circumstances.

Mr. **Bryant**. Now let's turn to the September 19th conversation between Mr. Rico and Mr. Borders, which is House Exhibit 43B.

Mr. **Shuy**. Yes.

Mr. **Bryant**. In that conversation, which of the two participants predominantly uses repeated words, false starts, and pause fillers in that conversation?

Mr. **Shuy**. Again, Mr. Rico.

Mr. **Bryant**. And with respect to the October 5th conversation, Judge Hastings has, in this conversation, inquired after more information, is that correct?

Mr. **Shuy**. Yes.

Mr. **Bryant**. And with respect to the earlier conversation between Rico and Borders, we do not know, do we, if Borders is stating the truth, that he knows for certain the order has gone out?

Mr. **Shuy**. I would not have any way of knowing whether he is telling the truth or not.

Mr. **Bryant**. In other words, the conversation has within it no——

Mr. **Anderson**. Objection, Mr. Chairman. I will let the question pass, but let's not do it again. That is called direct inference, based not on conversational analysis of ordinary things. Is Borders lying when he says the order has gone out? I assume you all will have to decide that. I am not sure how Professor——

The **Chairman**. I believe the witness indicated he has no basis for making a judgment on that.

Mr. **Bryant**. Mr. Shuy, in linguistic analysis, is there a distinction between indirect conversations and coded conversations?

Mr. **Shuy**. Yes.

Mr. **Bryant**. Explain the distinction to the committee, please.

Mr. **Shuy**. Yes. Indirectness is common to us all, in all conversations, depending on any number of factors such as how well we know the persons we are talking to, how much the information we are talking about is shared, and whether or not the—what our intentions are in being indirect.

I have already indicated you can be indirect in order to make the other person become direct. So there are many distinctions of indirectness—I mean, many characteristics of indirectness that occur in normal conversation. Indirectness in coded conversation is only a portion of—as I indicated, there are a cluster of features that indicate whether it is coded or not.

Indirectness certainly is characteristic of coded conversations as well, but they have these additional factors of the test of logical inconsistency, and——

Mr. **Bryant**. Are the taped conversations between William Borders and Paul Rico indirect conversations, or are they coded conversations?

Mr. **Shuy**. There is a great deal of indirectness in those conversations. They are not coded conversations.

Mr. **Bryant**. And in your opinion, once again, is the October 5th conversation between Borders and Judge Hastings an indirect or a coded conversation?

Mr. **Shuy**. It is a direct—I am sorry. It is a coded conversation with some indirectness in it, of course.

Mr. **Bryant**. Mr. Shuy, in the course of the cross examination, Mr. Anderson attempted to have you agree with him that if the October 5th conversation was a confirmation that everything was all right, that that would somehow be logically inconsistent with the conversation that took place 50 minutes earlier, in which Mr. Borders, in talking to the undercover agent, indicated to him that he already knew that everything was all right.

Mr. **Shuy**. Yes.

Mr. **Bryant**. Do you recall that?

Mr. **Shuy**. I do.

Mr. **Bryant**. I would like to ask you if you think there would be such a logical inconsistency if in fact what was supposed to be all right had not been done on time, but instead took place three or four, or five days later——

Mr. **Anderson**. Mr. Chairman, it seems to me this is exactly——

Mr. **Bryant** [continuing]. And therefore needed a reconfirmation on October the 5th? Would a logical inconsistency then exist?

Mr. **Anderson**. This is exactly the kind of question you suggested I ought sit down, or that I should abandon the line. This assumes facts not in evidence. It calls for this witness to speculate. It has nothing to do with conversation analysis.

The **Chairman**. The objection will be sustained.

Mr. **Bryant**. Finally, Mr. Shuy, when you undertook the assignment in this case, did you have any preference with respect to the parties, that is, the Government versus Judge Hastings?

Mr. **Shuy**. Well, I have to admit that I was reluctant to do the task because I had thought a lot of Judge Hastings. So if there was a bias, it was toward him.

Mr. **Bryant**. Thank you very much. We have no further questions.

The **Chairman**. Is there recross examination?

RECROSS EXAMINATION

Mr. **Anderson**. Briefly. Just to be sure I understand you, Mr. Shuy. The 10 conversations were between essentially strangers and one would expect some indirection there, is that correct?

Mr. **Shuy**. I do not know the nature of the relationship between Mr. Rico and Mr. Borders, except at the beginning when Mr. Borders asked him his name. So I would assume there was——

Mr. **Anderson**. And I take it one characteristic that one would expect to distinguish a conversation between friends, as opposed to between relative strangers, would be speed of inflection and intonation?

Mr. SHUY. Well, it depends on the circumstance, Mr. Anderson. Sometimes, friends will talk slowly, and sometimes they will——

Mr. ANDERSON. And sometimes they will talk quickly?

Mr. SHUY. Exactly.

Mr. ANDERSON. And friends are more likely to be capable of talking quickly and exchanging information than are strangers?

Mr. SHUY. Again, that depends on the circumstances. If you have a conversation with a stranger in which you know you have limits of time, you could do it very fast. I would hate to make a characterization on that.

Mr. ANDERSON. Now Mr. Shuy, indirection, I take it is a characteristic of both the October 5th conversation and of the other conversations you observed, is that correct?

Mr. SHUY. Almost all of life contains indirectness. Yes.

Mr. ANDERSON. But you find it, from a standpoint of conversational analysis, there is significant amounts of indirection in both those conversations? For the set of conversations between Mr. Rico and Mr. Borders, and the one conversation between Judge Hastings and Mr. Borders?

Mr. SHUY. No. I would say that there has the appearance of indirectness. "Did you hear from him?", for example, certainly refers to him. That cannot be indirect, if that is at face value——

Mr. ANDERSON. I am sorry. I thought you had told Representative Bryant that indirectness was a characteristic of both conversations but code you found only in one. Did I miss——

Mr. SHUY. Yes; yes. I am just trying to indicate that there was not—that the October 5th is not totally indirect, is what I am trying to say. There is indirectness in it but it is not totally——

Mr. ANDERSON. And so I take it there are reasons why one might find evidence of indirectness without concluding there was a code?

Mr. SHUY. Yes.

Mr. ANDERSON. For example, were two friends discussing a matter over lunch, and one of the participants had some ethical qualms, there might then be some nervousness, or pause fillers, and other things that would account for a certain amount of indirectness?

Mr. SHUY. That is a possibility.

Mr. ANDERSON. And so if it were a Federal judge discussing a previously-discussed matter to which he was reluctantly considering doing, writing letters on behalf of a friend, with the president of a bar association, there might be some hesitancy and indirectness in that conversation?

Mr. BRYANT. Mr. Chairman, that is exactly the same objection which——

Mr. ANDERSON. And I will accept the ruling and withdraw the question.

EXAMINATION BY THE COMMITTEE

The CHAIRMAN. The witness—if you will stand a few additional questions from the committee. Let me just ask one line of questions.

It occurs to me that many of the things you have cited as evident in the October 5th conversation—false starts, repeated words, pause fillers, confirmations of understanding—those are characteristics, or those are factors that increase as people become more tired.

Mr. **Shuy**. Yes. They are.

The **Chairman**. I notice it on the Senate Floor in debate, quite frequently late at night.

The conversation on October 5th is at 5:12 in the afternoon. The conversation on October 8th is at 9:37 in the morning.

Does that explain any of that, in your view, or is that not a significant factor?

Mr. **Shuy**. I think you are certainly right, Senator Bingaman, about the fatigue factor contributing to, but it does not mean that the lack of fatigue would decrease the amounts of the pause fillers, and so forth. Certainly lateness of the afternoon could be one of the factors.

There are many reasons, I think I tried to indicate, for using pause fillers, false starts, and repeated words, and included in that list could well be fatigue.

The **Chairman**. I think you indicated in the October 8th conversation there were two of these pause fillers, or repeated words?

Mr. **Shuy**. Yes.

The **Chairman**. And there were nine in the October 5th conversation?

Mr. **Shuy**. Yes, of half the length.

The **Chairman**. If the October 8th conversation had occurred at 5:12 in the afternoon, it might well have had significantly more in it, is that a fair assumption or not?

Mr. **Shuy**. That is conceivable.

The **Chairman**. That is all I had. Senator Specter.

The **Vice Chairman**. Yes, thank you, Mr. Chairman.

Mr. Shuy, in your 28-page curriculum vitae, you refer to your specialty as linguistics, socio-linguistics, social dialects, applied linguistics, applied socio-linguistics.

Is there any essential difference between all of those designations?

Mr. **Shuy**. Linguistics is the broad field of which many sub-specialties exist. Applied linguistics obviously is the taking of linguistic theory and relating it to real-world situations in education, doctor-patient communication, and whatever. Socio-linguistics is the relationship of language in real social contexts such as variation based on age, race, and sex, and socio-economic status, and so forth.

Psycho-linguistics is the study of the acquisition of language and the variability of language caused by neurological or psychological constraints. I do not deal with that field, so if you found that in my——

The **Vice Chairman**. You do not deal with what?

Mr. **Shuy**. Psycho-linguistics. I am not a psycho-linguist.

The **Vice Chairman**. Well, at page 8 you have got an editorial consultant who applied psycho-linguistics. Is that a mistake?

Mr. **Shuy**. No. It should be "applied linguistics".

The **Vice Chairman**. It should be what?

Mr. **Shuy**. "Applied linguistics", if it says "applied psycho-linguistics".

The VICE CHAIRMAN. Well, that is what it says.

Mr. SHUY. I do not know what we are referring to, exactly. Is it——

The VICE CHAIRMAN. But at any rate, linguistics, socio-linguistics, social dialects, applied linguistics—all about the same thing?

Mr. SHUY. It is in the same field of linguistics, yes.

The VICE CHAIRMAN. All about the same thing. Okay.

Mr. SHUY. You can draw a tree drawing with little branches coming out.

The VICE CHAIRMAN. Mr. Shuy, when you were laboriously examined on a variety of exhibits—43B, on an issue relating to fixed references, "You don't have confidence in that fellow?" 50B: "Your man should have told you." 503B: "Your friend should have told you. Your friend should tell you something." That really has nothing to do with code or linguistics when you talk about a commonsense inference, that they are talking about somebody whom they both understand, is there?

Mr. SHUY. No. That is not code. That is just a shared referencing, which is so shared that it does not need to be made explicit with the direct reference to the thing they are referring to. We do that all the time.

The VICE CHAIRMAN. Does that even remotely relate to something that requires an expert's testimony to tell a juror, or a Senator, or anyone, that they are talking about a fixed reference?

Does that have any remote relationship to something that calls for expert testimony?

Mr. SHUY. I do not know. I did not suggest the question, Senator Specter. I believe——

The VICE CHAIRMAN. I am not saying you suggested the question. I am asking you for an answer.

Mr. SHUY. Well, there is——

The VICE CHAIRMAN. Do we need you here, as an expert witness, to tell us that when they refer to "your man", or "that fellow", or "your friend", that we need an expert, in any way, shape, or form, to tell us that they are talking about somebody whom both understand to be a person?

Mr. SHUY. I would not think so.

The VICE CHAIRMAN. Mr. Shuy, you testified that on Exhibit 54B, which is this conversation of October 5, 1981, that that "could"—that was your word, "could"—be a conversation between friends about writing a letter about a friend. Right?

Mr. SHUY. I believe I said that that was—there were indications that they were friends from their beginning speech patterns, and that the face—at face value, it was about letters. Yes.

The VICE CHAIRMAN. Well, did you testify—using the word, quote, "could", unquote—that could be a conversation between friends who were talking about writing a letter for a friend?

Mr. SHUY. I am not sure of the context in which the question was asked, but it certainly was a letter in which the face value was about writing a letter for a friend, among friends.

The VICE CHAIRMAN. Well, the context was what your expert opinion was as to what 54B meant. But aside from the context, the thrust of what you are saying now is that, on face value, that could be a conversation between friends about writing a letter for a friend?

Mr. Shuy. Senator, it could be except for the features which I examined and went into detail to explain. The feedback markers, and so forth, indicate the candidate words, topic words in the conversation, which then had to survive the test of logical inconsistency—which they did not—and the test of confirmation of understanding which——

The Vice Chairman. Well, now, are you saying that it could not be a conversation between friends about writing a letter for another friend?

Mr. Shuy. No. I am saying my opinion is that it is not about writing a letter for Hemp but about something else. That it is a partially-coded conversation.

The Vice Chairman. But could it be a conversation between friends about writing a letter for another friend?

Mr. Shuy. I would say that it could be, except for the fact of the logical inconsistency, and the fact that it does call for a confirmation of understanding, and gets it, on a matter no more complicated than writing a letter for a friend, I understand is simply not a requirement in such a thing. That is what the critical factors to me were, Senator Specter, that indicate——

The Vice Chairman. So it could not be a conversation between friends about writing a letter for a friend?

Mr. Shuy. In my opinion, it is not.

The Vice Chairman. But could it be?

Mr. Shuy. I assume anything could be possible.

The Vice Chairman. Well, that is what I am trying to understand about the thrust of your conversation. I understood you to say in redirect examination from Congressman Bryant—and the record will show, with precision, what you did say—in the context of what this exhibit was, in your opinion—because all you are doing is testifying about your opinion——

Mr. Shuy. That is correct.

The Vice Chairman. That it could be a conversation between friends about writing a letter about a friend. Now, as I understand your testimony, the whole point in the categorization of a code is to raise an inference for this committee, and for the Senate, if there is any such thing as a code, that this conversation is really about a payoff and about arranging for an order to be issued, and could not be what it purports to be on its face—a conversation about writing a letter for a friend, between two friends, the friend being Hemp.

And all I am trying to find out from you, after more than three hours of testimony, is if you are telling this committee that it is possible—that is, it could be what it purports on its face to be. Or it is not possible. It could not be a conversation between two friends about writing a letter for a third friend.

Mr. Shuy. Now, Senator Specter, I was confused by the beginning of your question because I have no memory of the question that—as you posed it. I do remember saying that——

The Vice Chairman. Which question?

Mr. Shuy. The question about whether it was—you said Mr. Bryant asked me——

The **Vice Chairman**. Mr. Bryant, on redirect, asked you could this be a conversation between two friends about writing a letter for a third friend.

Mr. **Shuy**. And if I responded "yes" to that, I was responding to the part about was it a conversation, could it be a conversation between two friends. That is what I understood him to be saying.

Now, I would not want to say that it is a conversation, or could be a conversation about two friends. The analysis—I am sorry. That it could be a conversation about writing letters, because the analysis that I have shown indicates to me that it is not. I hope that is clarified.

The **Vice Chairman**. Well, I take your last answer to be, that whatever you had said before you did not mean—it could be a conversation between two friends. In your opinion, it could not be a conversation between two friends about writing a letter about a third friend.

Mr. **Shuy**. It could be a conversation about two friends. I do not believe it is a conversation about two friends writing a letter—writing letters for another friend. That part, I do not agree.

The **Vice Chairman**. Well, it may take 76 hours to review this, to understand it. Is there any scientific basis, Mr. Shuy, for this business about code conversation? That is, are there any studies which show that where there is an analysis of a code conversation, and there is a postulate that it means other than what it purports to mean, that the non-purported meaning is in fact true?

Mr. **Shuy**. No. To my knowledge, the analysis of coded conversation may well exist in some field like cryptography which I am not versed in, but the kind of——

The **Vice Chairman**. Let's not talk about cryptography. Let's talk about coded conversations that you are testifying to. My question to you is this: Is there any scientific basis for it? And by "scientific basis", I would elaborate. Has there ever been a study, that you have two people concluded to be talking in code, and it purports to be subject "A" and the conclusion is it is subject "B", and then there is a scientific study which shows that in fact they are talking about "B"?

Mr. **Shuy**. OK. The science that you appear to wish to have would be that of experimental science. That is, you would have a control in an experiment. You would not—I know of no such studies, first of all.

The **Vice Chairman**. All right. Now you do not know of any experimental science. Is there any other category of a scientific conclusion that you do know about?

Mr. **Shuy**. The only other studies that I know of are ones that I have done, which are not reported or written up, but which have been based on analysis of similarly-coded conversation in other court cases in which I have worked, where I called on the same linguistic features to determine whether or not code was being used.

The **Vice Chairman**. Well, on such an important conclusion, with a factual basis, Mr. Shuy, why have not you written it up, considering the fact that you have many, many pages in your curriculum vitae on your writings?

Mr. **Shuy**. Time. I am trying to write up as much as I can. I am running way behind, like the rest of us, I am sure.

The **Vice Chairman**. But in any event, you have a writing on such a scientific conclusion that you just described?

Mr. **Shuy**. I have analysis of it. I have not written it up as a formal paper.

The **Vice Chairman**. Does that analysis exist in a way that you could present it to this committee, after you finish your testimony?

Mr. **Shuy**. I would be very—not without several months preparation of it, I am sure. It would take me time to get that file into shape for you, in any reasonable——

The **Vice Chairman**. Well, if it would take several months to get the file into shape, how long would it take for you to describe it on the witness stand? Because if it is more than a few minutes, I am not going to ask you about it.

Mr. **Shuy**. OK. Well, it is very simple. I do not want to disclose the name of the case, but it was a case involving money laundering in which a rather—a famous case, as a matter of fact, in which the discussion between the participants had a partial word code in which there were substitutions of articles of clothing for both denominations of money and for types of drugs. And that code was used consistently, and in this case, with the same kinds of feedback marker—I am sorry—same kinds of pause fillers, repeated words, and false starts, that were available here.

But in general—to your question—I know of no scientific studies in print that do that. No.

The **Vice Chairman**. And the reference you just made is to the only "scientific study" out of print?

Mr. **Shuy**. Well, it was not an experimental study, if by "scientific" you mean——

The **Vice Chairman**. It really was not a scientific study, was it?

Mr. **Shuy**. Well, science goes in many ways. There is ethnographic analysis which does not do scientific—does not do experimental studies. Philosophers do not do experimental studies. Many researchers do research without doing experimentation.

The **Vice Chairman**. Well. would you essentially say that your expertise is a philosophical expertise?

Mr. **Shuy**. No. I am applying the theory of my field to a particular specific situation. If that is called "philosophy", that is fine.

The **Vice Chairman**. Mr. Shuy, what is your compensation for the services you perform here?

Mr. **Shuy**. Nothing.

The **Vice Chairman**. Thank you.

The **Chairman**. Are there other questions by members of the committee?

Senator **Rudman**. I have one. Just one question.

The **Chairman**. Senator Rudman.

Senator **Rudman**. Looking at October 5, 1981—do you have a copy of that in front of you?

Mr. **Shuy**. Yes.

Senator **Rudman**. You say that is a coded conversation?

Mr. **Shuy**. Yes.

Senator **Rudman**. Show me which line and which turn contains code.

Mr. **Shuy**. All right. Well, I will point to line—are these numbered?

Senator RUDMAN. Yes.

Mr. SHUY. Line 18. "Wrote some things down."

Senator RUDMAN. So you are say that writing some things down is code for something else?

Mr. SHUY. Yes. Getting some more things. Line 20. Line—or turn 21. We are in the middle line of it. "I communicate with him."

Senator RUDMAN. That is code?

Mr. SHUY. Yes.

Senator RUDMAN. Anything else?

Mr. SHUY. I believe that it is.

Senator RUDMAN. Wait a minute. Hold on a minute. What about turn 11?

Mr. SHUY. Oh. I started too late. Yes.

Senator RUDMAN. I mean, if there is a code at all, is that not the line that you claim has code?

Mr. SHUY. Letters. Yes, Senator Rudman.

Senator RUDMAN. "Hemp" meaning something else?

Mr. SHUY. You are quite right. "Hemp" and "letters".

Senator RUDMAN. Well, then this is not a code that is being developed by indirection. What you are saying—is this a code that the parties have prearranged?

Mr. SHUY. Yes.

Senator RUDMAN. So when Judge Hastings says "Hemp" Borders understands that to mean "order"?

Mr. SHUY. I do not know what he understands it to be, Senator. Only to say that it is code.

Senator RUDMAN. But you said it is a prearranged code?

Mr. SHUY. If it were not prearranged code, it would be full of requests for "What are you talking about?", "I don't understand you," if it were code and not prearranged.

Senator RUDMAN. You do not think it is possible for two people to have an indirect conversation, that both have a general background in some subject and talk about it indirectly, without having prearrangement?

Mr. SHUY. Oh, yes. That is possible.

Senator RUDMAN. Is it not possible that for some reason Judge Hastings did not want to talk too directly about writing letters for someone who was in jail who he wanted to help—or I do not know if he was in jail or not, but who evidently was out of the bar and wanted to get back in. Could that not be the reason for the indirection?

Mr. SHUY. No. May—if you will let me explain on this. What the suggested code words, if you will, "codeable words", "topic words", I have referred to them here are—are identified by the features I have talked about—the pause fillers, and so forth. The test of that is found in turn 21, where we have a logical inconsistency which indicates that the things that they have been saying, the plan that is being constructed here—"he wrote some things down," "I was supposed to go back and get some more things"—is radically changed without any particular objection, without any explanation.

"Then there is no great big problem." There was no great big—how could there be a great big problem about writing a letter? And "I'll see to it that I communicate with him, send the stuff off to Columbia in the morning" is a change in—this is, face value, about letters—that is a radical change in what they plan to do, suggesting that the "letters" was not what the topic was about at all.

Senator RUDMAN. Well, look at line 11. He says "I've drafted all those letters for Hemp."

Mr. SHUY. Right.

Senator RUDMAN. And then, on line 13, he talks about some concern, and did you hear from him after we talked. That could well be about letters, as well as anything else.

Mr. SHUY. At face value it could be, yes, and at that point it——

Senator RUDMAN. And then coming down to that line 21, which you just cited, I could read that to mean I am sending out the letters to Columbia in the morning, just as well, having looked at line 11. I guess what I am saying is, that I am not sure what the conversation means, but I can see a lot of different interpretations than the one you put on it.

Why is that logically inconsistent? Cannot line 21 refer to line 11, and line 13?

Mr. SHUY. In terms of structure of conversation, it would be very unusual to say "We're going to change the plan radically and do it in this way. All right. I understand."

Senator RUDMAN. Well, wait a minute. Hold on a minute. What do you mean? Change what plan, radically?

Mr. SHUY. The plan for Mr. Borders to go back and get some more things.

Senator RUDMAN. Well, you are referring to which line now?

Mr. SHUY. Eighteen. I am sorry. Twenty. Twenty. We have the——

Senator RUDMAN. So if I understand your answer, you are saying that because Mr. Borders, in line 20, is supposed to get some more "things"—whatever that is—then it is inconsistent for Judge Hastings to say, knowing that Borders is getting more things, that he is going to send off the letters anyway. Is that what you are saying?

Mr. SHUY. Exactly. And it is equally inconsistent for Borders not to say something like, "Well, whatever you want, judge."

Senator RUDMAN. Well, I appreciate your testimony. I have difficulty following some of your logic and some of your definitions, the pause fillers, and so forth.

Quite frankly, I look at the October 8th conversation, and that has got confirmation of things that did not have to be confirmed, and yet that was one of the things you testified was a hallmark of the October 5th conversation.

So it just seems to me that this must be a very imprecise business. Would you say that your science, compared to many, tends to be imprecise?

Mr. SHUY. I think my science is developing. I think it is—if you will let me respond to what you were saying on the October 8th, I would be happy to.

Senator RUDMAN. Fine. Then we will get back to that.

Mr. SHUY. There are certainly confirmations of facts in this. Confirmations of understanding what is being meant are different from confirmation of hearing the facts. Now that is what the difference is in the October 5th. The "I understand. All right. I understand."

Whereas, even in the understandings in the October 5th conversation are to things which are not so monumental as to need to be understood, whereas, something like "Eastern Flight 130" at least has some detail to it, and some explicitness that requires a reaction.

Senator RUDMAN. To go back to my last question, is your art, your science—would you consider at this point in its development imprecise?

Mr. SHUY. No, I think if—I would not want to characterize it as "imprecise". I think language is very complicated and requires very complicated analytical routines. One has syntactic routines that are highly detailed and complex, and precise.

In the case of discourse analysis there are many factors. For example, I did not bore the committee with the fact that in the September 12th tape there were a total of 77 of these features, of feedback—I am sorry—hesitate, pause fillers, repeated words, and false starts. Seventy-seven by Mr. Rico and only seven by Mr. Borders.

You know, we do count things. We do analyze them. There is a precision to it.

Senator RUDMAN. But unless you did a thorough analysis of the speech patterns of an individual based on a whole group of conversations, in all kinds of contexts, in all kinds of circumstance, is it not true, Doctor, that many people have difficulty in communicating in any situation—I am talking of some very brilliant, talented people—and have all kinds of pause fillers, and things that almost approach what would be a classic stutter, and double repeating of words. Is that not true?

Mr. SHUY. It is absolutely true.

Senator RUDMAN. Then how can you take just a conversation and use that as a factor at all?

Mr. SHUY. The difference is the clustering, where they exist; what it precedes; what follows it in a pre-test, post-test sort of fashion.

Senator RUDMAN. Well, I appreciate your testimony.

The CHAIRMAN. Are there other questions from committee members?

[No response.]

The CHAIRMAN. If not, we appreciate your testimony very much, Mr. Shuy. Any reason this witness cannot be excused?

[No response.]

The CHAIRMAN. If not, the witness is excused.

[Witness excused.]

The CHAIRMAN. Does the House have a witness we could put on and at least complete direct examination of in the next 10 or 15 minutes?

Mr. BRYANT. I do not believe we could complete the direct. We might come close.

The CHAIRMAN. Why do we not go ahead with the next witness, and we will plan to recess at 12:00, as we had originally scheduled.

Mr. BRYANT. The House at this time calls Jeffrey Miller.

The CHAIRMAN. Would you raise your right hand, please. Do you, Jeffrey Miller, swear and affirm that the evidence you shall give in the case now pending between the United States and Judge Alcee L. Hastings shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MILLER. I do.

TESTIMONY OF JEFFREY A. MILLER

DIRECT EXAMINATION

Mr. **Bryant**. Would you state your full name for the committee?

Mr. **Miller**. Yes. Jeffrey A. Miller.

Mr. **Bryant**. And where do you reside, Mr. Miller?

Mr. **Miller**. Boca Raton, Florida.

Mr. **Bryant**. What is your present occupation?

Mr. **Miller**. I am an attorney.

Mr. **Bryant**. And when did you graduate from law school?

Mr. **Miller**. I graduated in May 1980.

Mr. **Bryant**. In October 1981, where were you employed?

Mr. **Miller**. I was employed in the United States District Court in Miami as law clerk to the Honorable Alcee Hastings.

Mr. **Bryant**. And when did that employment start?

Mr. **Miller**. It started on or about the first of October 1980.

Mr. **Bryant**. Now as of the first week of October 1981, what was your expectation as to how long you would remain employed as Judge Hastings' law clerk?

Mr. **Miller**. I had been there for about a year at that time, and my expectations at that time was that I was going to finish up with the judge that month, and then move on to clerk with another Federal judge in the Southern District.

Mr. **Bryant**. So as far as you knew, did all law clerks in the courthouse come and go on the same schedule, that is, for 1 year, from October 1st to October 1st?

Mr. **Miller**. It varied by judge. It varied by clerkship. Generally, clerkships were for two years. Mine was only for a year. I stepped in the middle of someone else's term, but there wasn't any actual month, as a rule, that clerkships started or ended, as far as I was aware.

Mr. **Bryant**. Would you describe for the committee your responsibilities as a law clerk to Judge Hastings.

Mr. **Miller**. Sure. Helping the judge doing research; preparation of memoranda of law; working up cases for the judge; advising him on cases; preparing orders. Pretty much assisting the judge in carrying out his duties as a district judge. Whatever he wanted.

Mr. **Bryant**. Did you assist in keeping the docket moving as well?

Mr. **Miller**. Keeping the docket moving really was the function of the courtroom deputy. I handled more things in the area of the law. Substantive matters.

Mr. **Bryant**. All right. Did you work on all the cases assigned to Judge Hastings?

Mr. **Miller**. No. I did not.

Mr. **Bryant**. How were they assigned, then, to the law clerks?

Mr. **Miller**. In Judge Hastings' chambers the cases were divided on an even-numbered, odd-numbered basis. I handled the even-numbered cases. The other law clerk, the senior law clerk, handled the odd-numbered cases.

Mr. **Bryant**. If there was a memorandum of law submitted by counsel on each side in connection with a particular case assigned to you, would those memoranda come to you in the ordinary course of a proceedings in Judge Hastings' chambers for reading, and for review, and for comment?

Mr. MILLER. Yes, sir.

Mr. BRYANT. Was it his practice, the judge's practice, to receive information from you both orally and in writing?

Mr. MILLER. Yes, sir.

Mr. BRYANT. So would you, on occasion, give him written memoranda on pending issues and/or discuss those issues with him orally?

Mr. MILLER. Yes, I would, depending on the circumstance.

Mr. BRYANT. With respect to drafting memorandum opinions or orders, was it the practice of Judge Hastings to give you an outline, or did he expect you to go ahead on your own?

Mr. MILLER. With respect to preparing what, sir?

Mr. BRYANT. With respect to drafting memorandum opinions or orders, was it the practice of Judge Hastings to give you an outline, or did he expect you to go ahead and draft it on your own?

Mr. MILLER. It would depend on the circumstances, again, whether you are talking about in the civil context, perfunctory type discovery matters. Generally, if there were motions filed I would work it up and make a recommendation, and perhaps submit a proposed order for the judge. More substantive type things, we may discuss it.

If there were situations where there were bench trials, for instance, the judge would have to dictate the findings of fact and I could help him with the conclusions of law, and work with him in preparing the final memorandum opinion, as you stated.

So it really would depend on the circumstances. But for the most part, I would work up the cases, and give him my thoughts and opinions.

Mr. BRYANT. But you did the drafting, is that correct? He did not write you out an outline, and say, here, follow the outline?

Mr. MILLER. No, as a general rule, he did not do that.

Mr. BRYANT. Thank you. Now while you were employed as Judge Hastings' law clerk, did you work on the case *United States* v. *Romano?*

Mr. MILLER. Yes. I did.

Mr. BRYANT. How did that case come to be assigned to you?

Mr. MILLER. It was an even-numbered case.

Mr. BRYANT. All right. Did you work on that case during its trial, and all subsequent post-trial proceedings before Judge Hastings?

Mr. MILLER. Yes. I did.

Mr. BRYANT. There has been previous testimony and stipulations to the effect that certain events transpired in the *Romano* case, Mr. Miller. That the defendants were convicted by a jury on December 23, 1980. That the parties agreed to a bench trial on the forfeiture issue, and that Judge Hastings conducted evidentiary hearings on the forfeiture on December 30, 1980, and February 20, 1981.

That following those hearings, the parties submitted briefs by April 8, 1981, and that on May 4, 1981, Judge Hastings issued an order in which he adopted the Government's position, and ordered the forfeiture of a total of about $1.162 million.

Do the events I have just read to you comport with your recollection of the case?

Mr. Miller. Yes, sir.

Mr. Bryant. Now there has also been testimony that a hearing had been scheduled to hear argument on sentencing on May 11th.

Mr. Anderson. Mr. Chairman, could I object. I mean, this sounds to me a lot like Mr. Bryant is either giving a summation, or testifying, rather than asking questions. I am not quite sure where we are going, and I do not want to establish the procedure just because I did not object. I do object.

The Chairman. Would counsel try to call on the witness to testify and not be quite so leading in the questions that he is putting to the witness.

Mr. Bryant. Mr. Chairman, unless I recount these—I cannot depend on the witness to have this memorized. Unless I recount the critical dates, it is not possible for me to ask him a question about it. I have finished doing it, however.

The Chairman. You can cite the date and then ask the question.

Mr. Bryant. All right. There has been testimony that a hearing had been scheduled to hear argument on sentencing on May 11, 1981. Do you recall that?

Mr. Miller. I am sorry, sir.

Mr. Bryant. There has been testimony that a hearing had been scheduled in the *Romano* case to hear argument on sentencing for May 11, 1981. Do you recall that?

Mr. Miller. My recollection is that the sentencing of the Romanos was scheduled for that date. Yes.

Mr. Bryant. Did that hearing go forward, as scheduled?

Mr. Miller. The hearing went forward. Yes.

Mr. Bryant. You do not recall that a continuance was granted, that the matter of sentencing was continued?

Mr. Miller. Yes. The sentencing was continued but the hearing did go forward. The attorneys showed up, the judge was on the bench, I was there, and at that time I recall that Mr. Sonnett, I believe, had recently made an appearance in the case for the Romanos, or one of the Romanos, and had asked the judge for an extension of time to brief additional issues on a motion for new trial, and to brief additional issues on a motion to set aside the forfeiture order that had been entered the previous week, and the judge granted that request.

Mr. Bryant. Neal Sonnett came forward and asked for and received a continuance, is that correct?

Mr. Miller. That is my recollection.

Mr. Bryant. All right. Did Mr. Sonnett contact Judge Hastings' chambers beforehand to indicate that he would be seeking a continuance?

Mr. Miller. I do not recall him doing that.

Mr. Bryant. Do you recall testifying before in the criminal trial of Judge Hastings, in 1983?

Mr. Miller. I recall testifying there. Yes, sir.

Mr. Bryant. Reading from the transcript in *United States* v. *Hastings* at page 678, line 25, to 679, line 1. Do you recall the following questions to you, and your answers? This was a question to you. "Then very briefly——

Mr. MILLER. What was the question?

Mr. BRYANT. "Then, very briefly, what was the initial ruling of Judge Hastings on the forfeiture, May 4, 1981?" Answer: "He forfeited everything that the Government had requested be forfeited."

Now the next. "Will you describe what happened on the third entry."

"My recollection is that was—is the sentencing was scheduled for some time in May. The Romanos had been represented in trial by an attorney named Marshall Curran. After they were convicted, they hired a new attorney, Neal Sonnett, and I believe that Neal Sonnett had contacted Judge Hastings' chambers and requested that the sentencing be continued because he was going to file some post-trial motions, one of which was a motion for a new trial."

"And the judge granted that request, and would allow him to submit his memoranda and motions."

My question to you was: Do you recall having testified in 1983 at that trial, and do you recall having given this testimony that I just read to you from the transcript of that trial?

The CHAIRMAN. Mr. Anderson, did you have an objection?

Mr. ANDERSON. Yes. I would ask that the witness's response on a prior occasion be read through to conclusion, if it is going to be read.

The CHAIRMAN. Counsel, is there a continuation there of anything that relates to this same question?

Mr. BRYANT. Mr. Chairman, I do not see anything obvious, and I think——

The CHAIRMAN. Could we hand the transcript to the witness, and let the witness——

Mr. ANDERSON. It is two lines in the same answer. The last two lines are: "So I don't remember the exact date. That's my basic recollection." I thought that bore on the issue at hand.

Mr. BRYANT. I agree.

The CHAIRMAN. That information is now part of the record. You can continue with your questions.

Mr. BRYANT. Now Mr. Miller, I would like to ask you if that refreshes your recollection as to whether Mr. Sonnett had contacted the chambers beforehand to request a continuance?

Mr. MILLER. That, along with a number of the other documents that you provided me over the weekend, and when I met with you on Friday that was one of the questions that you had for me, and I have thought about it at great length over the weekend. I have looked at that transcript. I have had the opportunity to review the transcript of the proceeding before Judge Hastings on the 11th, as well as my prior grand jury testimony, and all the opportunities that I have had to testify throughout these proceedings.

And I will tell you that also considering the fact that the sentencing—that day, the 11th, was a Monday, and I recall a vivid conversation with Judge Hastings on the prior Friday, in the afternoon.

I am certain that Sonnett had not contacted our offices by Friday. I do not recall Neal Sonnett contacting our offices on Monday morning. I believe that the sentencing was scheduled for Monday morning.

Perhaps you could give me one other piece of information that might help, and that is, was the sentencing on the 11th scheduled for Fort Lauderdale, or was it in Miami? And that might make a difference.

I do not recall, specifically, Sonnett contacting the chambers. He certainly did not contact me. It would not have been unusual, though, for Sonnett, or any attorney who was going to request a continuance, on the spot like that, to alert the law clerk or the courtroom deputy prior to the hearing, that he was going to be seeking that kind of extension. And if he did, it might have been prior, immediately prior to the hearing.

Mr. **Bryant**. I assume that any testimony that I just read to you from that trial was volunteered to the jury by you, is that correct?

Mr. **Miller**. Nobody forced me to give that testimony. That is correct.

Mr. **Bryant**. Of course you know your testimony was truthful at the time that you gave it, is that correct?

Mr. **Miller**. I tried to be truthful as I could be, as I am trying to be today.

Mr. **Bryant**. And as recently as last Friday morning, was it your recollection that that testimony was accurate?

Mr. **Miller**. I did not have a recollection last Friday morning. As a matter of fact, when you asked me the question I did not recall it at all. Until such time as you gave me the opportunity to look at those transcripts—I even asked you if you had anything. And you did. You were kind enough to give me copies of those transcripts.

I took them home. I reviewed them. I thought about it, and I am certain as ever, that I do not recall Sonnett specifically requesting a continuance of me or contacting the chambers.

The **Chairman**. Counsel, it is 12:00 o'clock. This might be a good time for us to recess, and we will reconvene at 1:30 with this same witness.

[Whereupon, at 12:00 noon, the committee recessed, to reconvene at 1:30 p.m., this same day.]

AFTERNOON SESSION

The **Chairman**. The committee will reconvene.

Representative Bryant, if you could continue with your examination, please?

Mr. **Bryant**. Mr. Miller, before the committee recessed for lunch, we were discussing the question of whether you now recalled if Mr. Sonnett notified chambers before hand that he would seek a continuance on May 11, 1981.

Since your testimony in the criminal trial of Judge Hastings, which I read a moment ago, that took place in February 1983, have you had occasion to discuss this episode with Mr. Anderson?

Mr. **Miller**. Yes.

Mr. **Bryant**. When was that?

Mr. **Miller**. Last evening, I got into Washington, told him I would call him and get together and meet with him, as I hadn't actually met with him in all these years that this has been going on, to talk about my testimony. I told him that I spent a number of hours with you and the committee and I would make myself available if he wanted to talk to me.

I met with him here or at the office building that is adjacent to this building for something less than an hour, at which time we discussed my testimony.

Mr. BRYANT. Let me ask you this question: Was it your usual practice to advise the judge when you were his law clerk when an attorney forewarned you that he was going to be making a motion for a continuance?

Mr. MILLER. If I had been forewarned, it would have been my practice to advise the court, yes. Right.

Mr. BRYANT. That was part of your responsibilities, is that correct?

Mr. MILLER. As I understood them, yes.

Mr. BRYANT. With respect to Mr. Sonnett's oral request on May 11, 1981, did Judge Hastings grant that request for a continuance?

Mr. MILLER. Yes. You provided me with a copy of that transcript and I have reviewed it and the judge did grant a short continuance to allow Mr. Sonnett and the Government to file additional briefs.

Mr. BRYANT. That hearing on sentencing and other post-trial motions was rescheduled for July 8, 1981, was it not?

Mr. MILLER. I believe so, yes, sir.

Mr. BRYANT. Now, prior to that hearing on July——

Mr. ANDERSON. Mr. Chairman, that struck me as a leading question and, just before we get too far down the road, I think I would object to leading questions.

Mr. BRYANT. Mr. Chairman, I think——

The CHAIRMAN. Counsel can proceed with additional questions.

Mr. BRYANT. Prior to that hearing on July 8th, the defendants filed a motion for reconsideration of forfeiture, did they not?

Mr. ANDERSON. Objection. Leading.

Mr. BRYANT. Mr. Chairman, a leading question is one in which you elicit not previously elicited facts by virtue of the counselor asking the information. These facts have been in evidence now for a week.

The CHAIRMAN. Counsel, the objection that the question was leading is well-taken. If you could ask the witness a question before stating all the facts in each question, I think that would help him to testify as to what he recalls.

Mr. BRYANT. Well, did the defendants file a motion for reconsideration of the forfeiture prior to the hearing of July 8th?

Mr. MILLER. Yes, sir, they did.

Mr. BRYANT. All right. Now, between the time of the May 4th order and the July 8th hearing to consider that motion to reconsider the forfeiture, was there a development in the case law that affected the forfeiture issue?

Mr. MILLER. I'm sure there was. During the interim, the case of *United States* v. *Martino* was decided.

Mr. BRYANT. What was the holding in that case?

Mr. MILLER. Well, there was a number of holdings, but the one that was pertinent to the *Romano* decision had to do with the forfeiture, and my best recollection of *Martino* was that it held that profits may not be forfeitable, whereas, interest in enterprises were.

Mr. Bryant. Did you read the case shortly after it came out?

Mr. Miller. I'm sure that I probably did.

Mr. Bryant. All right.

Mr. Miller. We got the slip opinions, and it was my practice to read them.

Mr. Bryant. Did you believe that case was correctly decided?

Mr. Miller. I thought there were problems with the case. When I reviewed the memorandum of law submitted by Neal Sonnett and the response filed by the Government, even the Government's brief suggested that *Martino* was wrongfully decided, and I think that it was Mr. Deichert who suggested that there was a motion pending before the court to have the *Martino* decision considered by the entire Fifth Circuit.

Mr. Bryant. Well, notwithstanding your opinion that it was wrongly decided or at least of doubtful correctness, did you believe that the ruling in *Martino* was relevant to the forfeiture in *Romano*?

Mr. Miller. Well, certainly the *Martino* decision was relevant to *Romano*.

Mr. Bryant. In what way?

Mr. Miller. It related to a forfeiture situation that was similar factually and legally, so to the extent that the facts in *Romano* were similar to those facts in the *Martino* case, it was relevant.

Mr. Bryant. All right. As a trial judge of the Southern District of Florida, was Judge Hastings obligated to follow the law of the Fifth Circuit?

Mr. Miller. As obligated as any judge is to follow *stare decisis*.

Mr. Bryant. Well, if he had ignored that decision, would he have been reversed?

Mr. Miller. One never knows. You know, that's why we have appellate courts. Judges make rulings all the time, and I can't tell you how many times I have had cases dead on point, and I go to the judge and say, look, this is what you've got to do, and for some reason they don't do it.

Mr. Bryant. Well, I'm just asking you a lawyerly question. If he had issued an order in *Romano* that was contrary to the holding of *Martino*, on the grounds that the *Martino* decision was in his opinion wrongly decided, would he have been reversed?

Mr. Anderson. Objection. Speculation.

The **Chairman.** The witness can answer the question.

Mr. Miller. My feeling is that if the judge wasn't able to distinguish the facts of law in the *Romano* case, as opposed to the *Martino* case, and that if he had ruled against *Martino* and it was taken up and *Martino* was still good law, in my opinion the Fifth Circuit would have reversed him.

Mr. Bryant. Now, with respect to the sentencing on July 8, 1981, when the judge sentenced Romano brothers, what had you expected the judge—what type of sentence had you expected the judge to hand down?

Mr. Anderson. Objection. Again, it calls for speculation, with no foundation.

Mr. Bryant. It is not speculation. It is——

The **Chairman.** The objection is overruled. The witness can respond, if he had an expectation or an opinion at that time.

Mr. MILLER. Yes, sir. I didn't have an expectation or an opinion as to what the judge was going to sentence the Romanos to when he sentenced them. I did not know.

Mr. BRYANT. Well, what did you tell me this morning in our meeting, Mr. Miller, about what you expected the judge to do at that time?

Mr. MILLER. I told you exactly what I just told this panel, that I didn't have an expectation. What I did tell you this morning was that, in context of why I was certain that the judge hadn't been advised or why Mr. Sonnett hadn't advised me prior to the sentencing that he was seeking a continuance, was because on that prior Friday before the Monday when the sentencing was originally set, I can recall a conversation with Judge Hastings concerning what he might do or what his thoughts were concerning the sentencing of the Romanos, and I told you that that afternoon, late afternoon on Friday, we were talking about it and talking about the case in general and the judge had some misgivings about the way the case had been prosecuted and the kind of money and time that the Government had spent on the case, he wasn't real thrilled, he didn't think that all the Government's witnesses were honest and forthright, and I recall—I don't remember the fellow's name, but it was an accountant from New Jersey who testified——

Mr. BRYANT. Well, if I might——

The CHAIRMAN. The witness will be allowed to complete his answer.

Mr. BRYANT. I would just simply like an answer to my question.

The CHAIRMAN. If he would like to elaborate on his answer, he is permitted to do that.

Mr. MILLER. Again, we were talking in general terms that Friday afternoon about the *Romano* case, the judge's feelings about it, and he did suggest to me that he was considering sentencing them to probation. He didn't tell me that was what he had decided to do. I remember having some discussions with him about it at that time, but he didn't give me any indication that that is what he was going to sentence them to. Of course, Monday he came to court and I don't recall if it was Miami or Fort Lauderdale, and I do recall after reading the transcript that the case was continued, sentencing was set aside for another day——

Mr. BRYANT. All right.

Mr. MILLER.—and the judge and I, as best I can recall, didn't have any further discussions about the sentence. So, when he ultimately sentenced Thomas and Frank Romano, I did not know what the judge was going to do. I had no idea.

Mr. BRYANT. Was the judge's reputation as far as—what was the judge's reputation as far as sentencing, compared to other judges?

Mr. MILLER. At that time, Judge Hastings, I would say his reputation in the Southern District of Florida was more of a moderate, more lenient sentencer, which caused some problems from time to time with press releases and what not from the U.S. Attorney's Office. But compared to the other judges, I would say that he was on the low end of the spectrum.

Mr. BRYANT. Following the July 8, 1981 hearing, what did you do with respect to the forfeiture matter?

Mr. MILLER. Sorry?

Mr. Bryant. Following the July 8, 1981 hearing, what did you as law clerk do with respect to the forfeiture matter?

Mr. Miller. That was the hearing where Sonnett and Deichert were present and argued the merits of the forfeiture?

Mr. Bryant. That's correct. This is where the forfeiture issue—yes.

Mr. Miller. After the conclusion of that hearing, I continued to do as I had discussed with the judge immediately prior to that hearing and immediately after that hearing, which was to continue to research the merits of *Martino*, to continue to research any other precedent which might affect it, and to wait, to wait to see if the Fifth Circuit was in fact going to take *Martino* en banc, as suggested by Mr. Deichert.

Mr. Bryant. Well, did you draft a proposed order after that hearing?

Mr. Miller. Certainly, after the hearing I drafted a number of proposed orders.

Mr. Bryant. Well, did you draft a proposed order with regard to the forfeiture matter after the hearing?

Mr. Miller. Yes, sometime after July 8th, I prepared a number of draft orders and ultimately culminating in the order that was signed by the judge in October.

Mr. Bryant. Well, did you prepare an order, a draft order in July, the same month that that was issued, the same month that——

Mr. Miller. I'm sure I was working on the draft in July and August, yes, sir.

Mr. Bryant. I'm sorry, would you answer that again?

Mr. Miller. I'm sure that I was working on the draft order in July and August.

Mr. Bryant. I would like to show you House Exhibit No. 120 and ask you if this is the draft which you prepared?

Mr. Miller. Yes, this is one of the drafts that I prepared.

Mr. Bryant. Now, when was that draft prepared?

Mr. Miller. Sometime after July 8th. I cannot tell you when this was typed, but it would have been sometime after July 8th. I don't think I did anything in September on the file. It would have been sometime after July 8th and the beginning of September.

Mr. Bryant. Let me ask you to take a look at the last page, where you have prepared a point where the order is to be signed, and I think you wrote a date down at the bottom. Would you read the month of the date that you wrote at the bottom?

Mr. Miller. Sir, I'm sorry, it's not on this page, it is not on this exhibit. The last page I have is 7057.

Mr. Bryant. I will come back to that when we find the relevant page.

Subsequent to the *Martino* decision we were just discussing and prior to October 6, 1981, were there any further developments in the case law of the Fifth Circuit pertaining to forfeitures under RICO?

Mr. Miller. Yes, sir.

Mr. Bryant. What were they?

Mr. Miller. My recollection is that sometime in September the Fifth Circuit had issued an opinion in the case of *United States* v.

Peacock, which was another RICO-type case, where there were forfeitures involved.

Mr. **Bryant**. Mr. Chairman, at this point, I would like to offer into evidence, but not read, Stipulation No. 111.

The **Chairman**. Is there objection to Stipulation 111 coming into evidence?

Mr. **Anderson**. No.

The **Chairman**. They will be admitted.

[Stipulation Number 111 was received in evidence.]

111. On August 27, 1981, the United States Court of Appeals for the Fifth Circuit issued an opinion in the case of *United States* v. *Peacock,* 654 F.2d 339 (1981), *vacated in part,* 686 F.2d 356 (5th Cir. 1982), *cert. denied,* 464 U.S. 965 (1983). In its August 27, 1981 opinion, the court in *Peacock* followed the June 19, 1981 decision in *Martino.*

Mr. **Bryant**. Mr. Miller, I would like to back up to my question with regard to the draft order which you prepared after the July hearing and, once again, hand you the order, which is Exhibit No. 120, and refer you to the last page and ask you if it does not indicate that, when it was prepared, you wrote in the month of July, but left the day of July blank?

Mr. **Miller**. OK. Again, this is one of the number of drafts that I prepared, and I do see that there is a reference to July, yes.

Mr. **Bryant**. In other words, when you prepared the order, prepared it as any order for signing, and you wrote a date in there, but left—you wrote the month of the date in there, but left the actual date blank, to be filled in later on, is that correct?

Mr. **Miller**. This is obviously a rough draft. This is not something that the judge would have signed, in any event, there wasn't a place for the judge to sign. This was a typed copy of a——

Mr. **Bryant**. Well, if that is the——

Mr. **Miller**. You can that my handwriting on it is scribbled through, this wasn't——

Mr. **Bryant**. That's correct, there's no argument with that.

Mr. **Miller**. OK.

Mr. **Bryant**. My point is that the last page of——

Mr. **Miller**. I would have prepared this in July.

Mr. **Bryant**. Thank you.

Mr. **Miller**. This document would have been prepared in July, yes.

Mr. **Bryant**. OK.

At this time, Mr. Chairman, I would offer in evidence House Exhibit No. 120.

The **Chairman**. Is there objection?

Mr. **Anderson**. No objection.

The **Chairman**. It will be admitted.

[The document referred to was marked House Exhibit No. 120 and was received in evidence.]

Mr. **Bryant**. I believe you just testified, Mr. Miller that, subsequent to the *Martino* decision and prior to October 6th, the *Peacock* decision was handed down. I will show you Exhibit No. 121 and ask you if you recognize it to be a copy of the *Peacock* decision.

Mr. **Miller**. It looks like it to me.

Mr. **Bryant**. We offer in evidence at this time Exhibit 121.

The **Chairman**. Is there objection?

Mr. **Anderson**. No objection.

The **Chairman**. It's admitted into evidence.

[The document referred to was marked House Exhibit No. 121 and was received in evidence.]

Mr. **Bryant**. Mr. Miller, as clerk, did you bring the Peacock case to the attention of Judge Hastings?

Mr. **Miller**. Yes, sir, I'm sure that I did.

Mr. **Bryant**. And what did you tell him with regard to that case?

Mr. **Miller**. Bringing him up to date on my research and what not, I would have told him that the Fifth Circuit has, in essence, affirmed the *Martino* case and that, notwithstanding my feelings and the Government's feelings about *Martino* and the way it handled the forfeiture provision, that it looked like we didn't have much of an alternative but we had to give some of the money back.

Mr. **Bryant**. And what was Judge Hastings' reaction?

Mr. **Miller**. In essence, it was don't agonize so much, don't agonize and I had been doing, and if you feel as though we have to give the money back, then give the money back.

Mr. **Bryant**. OK. Now, as a result of that discussion prior to October 6, 1981, did you submit a draft order to Judge Hastings?

Mr. **Miller**. No, sir.

Mr. **Bryant**. Now, what happened on October 5, 1981, with respect to the *Romano* case?

Mr. **Miller**. The judge asked me again on the 5th what the status of the case was, I had been promising him a final order for some time. Due to a number of circumstances, not the least of which was that I just didn't do it, but there were a number of other emergencies arising during that interim period of time, we had the Haitian refugee case, we had preliminary injunctive-type cases coming in the summer months, I was getting ready to leave the judge shortly. He came and asked me again what is the status, I ran it down again, let him know that, although *Peacock* suggested we had to give the money in accordance with *Martino*, I didn't think it was the appropriate thing to do. He said again, don't organize, do the order, give me the order, and he wanted the order that day.

Mr. **Bryant**. What did he say?

Mr. **Miller**. Get me the order.

Mr. **Bryant**. When?

Mr. **Miller**. That day.

Mr. **Bryant**. What time of day did this discussion of October 5th take place?

Mr. **Miller**. Oh, I think it was—it might have been around lunch time, early afternoon, late morning.

Mr. **Bryant**. Is your answer late in the morning?

Mr. **Miller**. I think either late morning or early afternoon, lunch time, thereabouts.

Mr. **Bryant**. Do you recall when you testified before the grand jury on October 15, 1981, being asked the following question and giving the following answer—and I'm reading from the transcript, page 57, line 2: "Now, what time of day was it?" Your answer was, "I think it was late in the morning, maybe 11:00, 11:30." Does that refresh your recollection as to what time of day Judge Hastings instructed you to do the order today?

Mr. **Miller**. I don't think that is any different than my testimony I just gave. But yes, it refreshes my recollection now.

Mr. **Bryant**. Was there any legal requirement or deadline in the *Romano* case that necessitated the order with respect to reconsideration of the forfeiture being issued that day or soon thereafter?

Mr. **Miller**. I'm sorry, could you repeat the question?

Mr. **Bryant**. Was there any legal requirement or any deadline in the *Romano* case that necessitated that the order be put out that day or soon thereafter?

Mr. **Miller**. Other than the fact that I was leaving and we had a number of projects that I was responsible for and that I recall the judge I think was getting ready to go away and I was getting ready to move on to work for another judge, other than those exigencies, I don't think there was any other legal requirement that the *Romano* order be done on the 5th or 6th.

Mr. **Bryant**. In the *Romano* case, had Judge Hastings ever before asked you to prepare an order that same day?

Mr. **Miller**. No.

Mr. **Bryant**. In order to prepare the order that day, what did you have to do?

Mr. **Miller**. Because I knew that I had to finish the order and other matters that were still pending that had to be done, because I was the law clerk that had worked on them, I had taken the *Romano* file home with me, with my research and with my notes and what not, so I couldn't finish it in the office. I went home. I went home and I finished it and I brought it back the next morning.

Mr. **Bryant**. Now, that morning when you left, were you in the judge's chambers in Miami, rather than Fort Lauderdale?

Mr. **Miller**. Yes, I was.

Mr. **Bryant**. How long a drive was it from the Miami chambers to your home?

Mr. **Miller**. About 45 minutes.

Mr. **Bryant**. When was the order actually completed by you?

Mr. **Miller**. I would have finished it at home that night or maybe the next morning.

Mr. **Bryant**. OK. And when did you bring it into the judge's chambers?

Mr. **Miller**. It would have certainly been the next morning, and I would have given it to the judge's secretary to type.

Mr. **Bryant**. On October 6th?

Mr. **Miller**. That's the date that the order was signed, yes.

Mr. **Bryant**. Did the order you drafted on October 5, 1981 provide for a partial reversal of the May 4, 1981 order?

Mr. **Miller**. Yes.

Mr. **Bryant**. And what did you do with it, again, when you arrived at the court the next day?

Mr. **Miller**. I gave it to the judge's secretary to type.

Mr. **Bryant**. All right. When was it presented to the judge?

Mr. **Miller**. My best recollection would have been mid-afternoon, sometime later in the day, I think—and I could stand corrected—I think the judge was on the bench trying another case, I think I may have sent it to him while he was on the bench.

Mr. **Bryant**. Did he make any changes?

Mr. **Miller**. No, sir.

Mr. **Bryant**. When did he sign it?

Mr. **Miller**. That afternoon.

Mr. **Bryant**. Was it the usual practice in Judge Hastings' court to mail out orders special delivery, when there was no time limit within which the court or the parties were operating?

Mr. **Miller**. Well, the usual practice—the person who could best testify about the usual practice would have been the courtroom deputy, Marilyn Carter. I don't know. I mean, there didn't seem to be any real reason why anything should get regular or special delivery, and she'd be the one you would really need to talk to.

Mr. **Bryant**. Well, she's not here, and my question to you is the same as I asked you earlier, was it the usual practice in Judge Hastings' court to mail out orders special delivery, when there was no time limit within which the court or the parties were operating?

Mr. **Miller**. If it was important to get the order out, it would be sent special delivery; if it wasn't important, it wouldn't be sent special delivery. Other than that, the truth of the matter is I can't tell you, I really don't know. It was certainly something that everyone was waiting for, I know Deichert had been calling a lot wanting to get the order, so it wouldn't surprise me if the order would be sent out special delivery, but it wasn't usual, it wasn't unusual.

Mr. **Bryant**. Now, prior to the October 6, 1981 order actually being signed, did anyone outside Judge Hastings' chambers, other than the members of your own family, perhaps, to your knowledge know the contents of the order?

Mr. **Miller**. Did they know—had anyone had access to my proposed draft?

Mr. **Bryant**. My question was, prior to the October 6, 1981 order actually being signed, did anyone outside Judge Hastings' chambers, to your knowledge, know the contents of the order?

Mr. **Miller**. Well, I think, as I told you on Friday, I think my brother might have read it, my wife might have read it back at home. Beyond that, I did not disclose the contents of that order to anyone outside of the chambers.

Mr. **Bryant**. Well, did your wife or your brother know a man named William Borders?

Mr. **Miller**. I doubt it.

Mr. **Bryant**. OK.

Mr. **Miller**. I doubt it.

Mr. **Bryant**. Why would that fact, that is to say, why would the contents of this order not be known outside of chambers?

Mr. **Miller**. Because what goes on inside chambers, as a generally rule, is confidential.

Mr. **Bryant**. In 1981, when you worked for Judge Hastings, where were the case files for pending active cases kept?

Mr. **Miller**. The case—at that time, the system in the Southern District was that the open files would be maintained in each judge's chambers. In Judge Hastings' case, there was a filing room that was—if you walk immediately into the chambers, there was a room where a secretary and a deputy clerk sit, and there was an anteroom; there was a closet off to one side; there were files maintained there; files would be kept either in the law clerk's—if we were working on a file, we would have a file; there was a table out front where files could be kept. There could be a circumstance where the judge would have files in his office. But for the most part, when the deputy clerks came in to do filing, it would be in that closet.

Mr. BRYANT. So, if anyone wanted to look at the official court files for an active case, he or she would have to go to that judge's chambers and ask to see the files, is that correct?

Mr. MILLER. Public record, and the answer is yes, they would have to come there.

Mr. BRYANT. The judge's chambers?

Mr. MILLER. Yes.

Mr. BRYANT. All right. Prior to October 9, 1981, did you know or had you ever met William Borders?

Mr. MILLER. No, sir.

Mr. BRYANT. Had you ever heard his name?

Mr. MILLER. Not that I can recall, I don't believe so.

Mr. BRYANT. Mr. Chairman, I now offer into evidence Stipulation No. 58.

The CHAIRMAN. Is there objection to that stipulation?

Mr. ANDERSON. No objection.

The CHAIRMAN. It will be admitted.

[Stipulation No. 58 was received in evidence.]

Mr. BRYANT. At this time, I will read Stipulation No. 58, which is that, "On September 12, 1981, William Borders had no official connection with the *Romano* case, nor was he a member of the Florida bar."

At this time, Mr. Chairman, I would ask that the remaining cover for October 5, 1981, on the chart be removed.

That will conclude my direct examination of this witness.

The CHAIRMAN. Is there cross-examination of this witness?

Mr. ANDERSON. Yes.

Senator RUDMAN. Mr. Chairman?

The CHAIRMAN. Senator Rudman.

Senator RUDMAN. This question is really addressed to counsel for the House. One of the things you used in your cross-examination of this witness was the transcript of the criminal trial of Judge Hastings, and you read from certain pages of that. Did you enter that into evidence?

Mr. BRYANT. No, we did not offer it in evidence.

Senator RUDMAN. Did you intend to?

Mr. BRYANT. We did not intend to.

Senator RUDMAN. All right.

The CHAIRMAN. Mr. Anderson, you can proceed with your cross-examination.

Mr. ANDERSON. Thank you, Mr. Chairman.

CROSS EXAMINATION

Mr. ANDERSON. Mr. Miller, you indicated that we met last evening. About how long did we meet?

Mr. **Miller**. As I said, it was something less than an hour, maybe 45 minutes.

Mr. **Anderson**. Where did we meet?

Mr. **Miller**. In a lunch room cafeteria in either this building or the building next door, the Dirksen Building.

Mr. **Anderson**. And on how many occasions before that have you and I met?

Mr. **Miller**. I don't think we've ever met and discussed this case. I just——

Mr. **Anderson**. And you have had——

Mr. **Miller**. If we have, I don't recall it.

Mr. **Anderson**. And you have had to live with this for almost 8 years now?

Mr. **Miller**. Eight years.

Mr. **Anderson**. I think you and I are vying for seniority.

Let me take you back through some of the events. Am I correct that you started working as Judge Hastings' clerk shortly after you got out of law school?

Mr. **Miller**. Right. I graduated from school in May of 1980, I sat for the Florida bar in July 1980, and was hired by Judge Hastings I think in either August or September of 1980 and started the clerkship, which was a one-year clerkship on October 1st of that year.

Mr. **Anderson**. So, from the outset, you, Judge Hastings and anyone who cared knew that you were serving a one-year term, from October 1, 1980 through September 30, 1981, is that correct?

Mr. **Miller**. That's correct.

Mr. **Anderson**. And that was not confidential information?

Mr. **Miller**. That wasn't confidential at all.

Mr. **Anderson**. Now, it was at the May 11th hearing, wasn't it, that Judge Hastings permitted and directed that the parties file additional motions, memoranda, et cetera, in connection with sentencing?

Mr. **Miller**. It was not so much in connection with sentencing, I recall, as it was on the motion for new trial, additional arguments that Neal Sonnett said he was going to raise, and on the issues relating to forfeiture, and the judge directed them, at Mr. Sonnett's request, I think he gave Mr. Sonnett 15 days and 15 days for the Government to respond.

Mr. **Anderson**. Now, 15 days and 15 days to respond would take us up to some time in June. Do you have any recollection why the sentencing was ultimately—the final hearings and sentencing were ultimately rescheduled to July?

Mr. **Miller**. My best recollection was that Deichert, Jim Deichert, was in another trial, had some conflict, I think. Of course, then you had the 4th of July period coming up. Why they picked July 8th I do not really recall. The judge himself may have had some conflicts. He might have been in trial. I do not recall. But Marilyn Carter, for whatever reason, picked that date.

That was not something that the judge would—that was not something that he took charge of. He would, say, set it within a given parameter, and Marilyn Carter was in charge of the calendar.

Mr. **Anderson**. And she is the courtroom deputy; is that correct?

Mr. **Miller**. Yes, sir.

Mr. ANDERSON. Now, you indicated that a decision—I do not know whether you testified, but it has been stipulated to, put into evidence, and proved 43 ways—the decision named *United States* v. *Martino* came down, was issued on June 19th. Do you recall that?

Mr. MILLER. Yes, sir.

Mr. ANDERSON. And I believe you testified that those slip opinions were mailed out by the Court of Appeals to chambers and it was your habit to read them?

Mr. MILLER. Yes, that is true.

Mr. ANDERSON. And was it some time after that that the counsel for the Romanos brought this case to your attention?

Mr. MILLER. Yes. And, again, my recollection is a bit foggy on this, and perhaps the docket sheet would be a better indication of when Mr. Sonnett ultimately filed the motions. I do not think that Mr. Sonnett filed the motions until at least the passing of the two-week period that the judge had given him, and I do not think that I really honed in on *Martino* until that time. But I just do not recall. I just do not recall. It has been—like I said, it has been eight years.

Mr. ANDERSON. May I have a moment, Mr. Chairman?

The CHAIRMAN. Yes, you may.

Mr. ANDERSON. Could I ask that the witness be shown House Exhibit No. 2?

Mr. Miller, you have before you what has been admitted as House Exhibit No. 2. Can you recognize that?

Mr. MILLER. Yes. This appears to be a copy of the docket sheet in the *Romano* case. And I am trying to——

I see the order, the docket entry of June 1st. The judge is ordering the defendant to submit any supplemental post-trial motions by June 5th, Government shall have to the 23rd, cause set for final argument on the 8th.

Mr. ANDERSON. Let me direct your attention to document number 113 on June 5th, and ask if that refreshes your recollection.

Mr. MILLER. Yes. Here it is. Filed June 5th, Tom and Frank Romano's motion for reconsideration. Right. So if it was filed on the 5th, I would have received it in my box on the 5th or shortly thereafter.

Mr. ANDERSON. All right. But staying at that page in the docket, that was before *Martino* had been issued, was it not?

Mr. MILLER. *Martino,* was it the 19th?

Mr. ANDERSON. Decided June 19th.

Mr. MILLER. June 19th, right. That would have been before *Martino.*

Mr. ANDERSON. And then did Mr. Sonnett have occasion to file a supplemental memorandum on this issue before the hearing on July 8th?

Mr. MILLER. The Government filed its memo in opposition on the 29th. The defendants filed a reply on July 6th, and the Government filed a supplemental letter memo of law on July 7th.

Mr. ANDERSON. And to the extent that refreshes your recollection, was the defendants' memorandum on July 6th dealing with the question of forfeiture?

Mr. **Miller**. Oh, yes. It did have to do with forfeiture. It says so here.

Mr. **Anderson**. Now, you indicated that those memoranda by counsel on cases that were assigned to you were put in your box?

Mr. **Miller**. Yes, that is true. That is what happened.

Mr. **Anderson**. When did you receive that memoranda?

Mr. **Miller**. Again, I would have received it soon after it had been filed.

Mr. **Anderson**. The 6th or the 7th?

Mr. **Miller**. That is correct. That is right.

Mr. **Anderson**. And when was the hearing set for?

Mr. **Miller**. The 8th, July 8th.

Mr. **Anderson**. Now, was it your practice to forward copies of memoranda or slip opinions to the judge, or was it your duty to digest them yourself?

Mr. **Miller**. No, it was not my practice to forward copies of cases or slip opinions to the judge. What I would do is prepare a workup for the judge, if you will, considering the motions, the memoranda, the case law, controlling case law, and whatnot; try to give him a succinct statement of the facts, the law that is being argued by both sides, and a recommendation.

Mr. **Anderson**. And do you have any recollection—did you prepare a briefing memorandum or having a briefing conversation with Judge Hastings concerning the issues that were to come before him on July 8th?

Mr. **Miller**. Well, yes to both questions. First of all, I did prepare a memorandum for the judge which I had given to him some time in morning of the 8th. I recall working on it the prior day and evening and finishing it the next morning. It was not ever typed. It was in my own handwriting. And I think the sentencing was scheduled late morning or, again, maybe after lunch. But I had an opportunity to talk to the judge briefly before he took the bench about those things that were in my memo.

Mr. **Anderson**. And did you enclose a copy of the slip opinion in *Martino* with your handwritten memo, if you recall?

Mr. **Miller**. I do not recall doing that, nor is that something I would have done. I do not think I did.

Mr. **Anderson**. Now, do you recall, was *Martino* the only matter the judge had before him on that day?

Mr. **Miller**. No. There were a number of other matters. First of all, I think he might have been on the bench handling other business that morning. Certainly, the forfeiture was not the only consideration that he had with respect to the *Romano* case. He had sentencing; he had the motions for a new trial to deal with, the forfeiture aspect of it. And I will tell you, as a general rule, when the judge was in town, he was always on the bench. There was not a day that went by generally when he was in Miami that he was not in trial or conducting some type of hearing.

Mr. **Anderson**. So you were dealing with a busy public official and would brief him as the opportunity arose?

Mr. **Miller**. Getting to the judge was not always the easiest thing. There were a lot of people who needed his time or who wanted his time—attorneys, litigants. When not on the bench, he was not often in chambers. He was often flying about the country giving speeches, lectures and whatnot.

Mr. **Anderson**. Directing yourself specifically to the morning of July 8th and the *Romano* hearing, were there other issues besides the question of forfeiture before the court?

Mr. **Miller**. Yes. The motion for new trial that had been pending. I believe that Marshall Curran had filed a motion for new trial, and then when Neal Sonnett took over the case, he filed either a supplemental or an amended motion for new trial, raised a number of issues, substantial issues.

Ironically, you know, the *Romano* case ultimately was reversed because one of those issues that Mr. Sonnett had raised they found persuasive.

Mr. **Anderson**. And they also had the question of the appropriate sentence to be imposed; is that correct? That was another issue the judge had to resolve that morning?

Mr. **Miller**. Yes.

Mr. **Anderson**. Now, Mr. Miller, let me show you a copy of what was marked House Exhibit 119. I do not have the original, but let me ask you if you can identify this exhibit.

Mr. Chairman, I apologize. I have no copies, but I think it is in your book because it was a House exhibit.

Can you identify that?

Mr. **Miller**. This is a copy of—this appears to be a copy of the written memorandum, workup that I had done for Judge Hastings and which I had given to him the morning of July 8th.

Mr. **Anderson**. And would that have been the kind of briefing memo consistent with your ordinary practice that you would give him on a pending motion?

Mr. **Miller**. Yes. Generally, as I said, lay out the facts, lay out the law, lay out the arguments of the parties, and then give him some kind of summation or conclusion. I see that the first page here starts with "In sum," and I do not recall if that was the first page.

Mr. **Anderson**. Well, let me ask you: Did you keep your own personal file with rough drafts and notes in the *Romano* case?

Mr. **Miller**. Yes, I did.

Mr. **Anderson**. What happened to that file?

Mr. **Miller**. Early on, way early on, I think as early as my grand jury appearance, I think that I gave them my file.

Mr. **Anderson**. You gave the file you had maintained to?

Mr. **Miller**. To the prosecutors. Certainly, whatever files I had, I had given to them, the prosecutors, whoever they might have been through the years. We have been through so many.

Mr. **Anderson**. Do you recall when the memorandum—have you seen that memorandum in that form before, with the "In sum" on the first page?

Mr. **Miller**. Yes, I have seen this before. This is actually a reduced—my original would have been on legal pad paper. Yes, I have seen this before.

Mr. **Anderson**. Do you recall where you saw it? For example, did you see it in the Investigating Committee when you appeared in Atlanta?

Mr. MILLER. Sure. I saw it in the Investigating Committee. I saw it—well, I saw it last week. The prosecutor sent me a copy of it along with my testimony. This is a document that is not unfamiliar to me.

Mr. ANDERSON. Let me show you a copy of what has been marked Respondent's Exhibit No. 38 for identification and see if you can identify it.

Mr. MILLER. This is something that I prepared. It is in my handwriting. It is a copy of—it appears to be a summary of the supplemental motions filed by Mr. Sonnett and the Government's response. It pretty much dealt with the issue of the motion for new trial.

Mr. ANDERSON. Again, does that appear to be the kind of briefing memo you would have prepared for Judge Hastings in anticipation of the July 8th hearing?

Mr. MILLER. Yes.

Mr. ANDERSON. Now, in any of your prior occasions when you have been called before bodies to appear, have you been asked to bring that memorandum, to your recollection?

Mr. MILLER. Was I asked to bring it?

Mr. ANDERSON. Have you been shown that memorandum before?

Mr. MILLER. I am sorry. Was I ever——

Mr. ANDERSON. Has that been identified in any of these prior proceedings that you recall?

Mr. MILLER. Let me tell you, I have been before so many committees, in so many bodies and grand juries and petit juries. I do not recall if this has been shown to me, but the fact that you have it indicates that it was gotten from the other side of the room, and they got it from me. So I do not know if they have ever asked me questions about it or not.

Mr. ANDERSON. Well, directing again your attention to July 8th, that second memorandum would also have gone to Judge Hastings in connection with your briefing him for the issues of the day.

Mr. MILLER. I am sure it would have, yes.

Mr. ANDERSON. Do you recall how much time you spent briefing him?

Mr. MILLER. Not a lot. I mean, I think less than 5 minutes.

Mr. ANDERSON. And do you recall how long the full *Martino* opinion was? Was it a thick opinion?

Mr. MILLER. It would take some time to read. It was not the longest opinion that the Fifth Circuit has come out with. But I do not know if 10—I really do not recall.

Mr. ANDERSON. To your knowledge, had you ever given him a copy of that opinion?

Mr. MILLER. I do not recall ever doing that, no.

Mr. ANDERSON. Mr. Chairman, I would move the admission of House Exhibit, whichever number that was I showed him, and Respondent's Exhibit 38, and I have copies of 38 for the committee.

The CHAIRMAN. Are there objections to the introduction of House Exhibit 119 and Respondent's Exhibit 38?

Mr. BRYANT. No objections.

The CHAIRMAN. They will be admitted.

[The documents referred to were marked House Exhibit No. 119 and Respondent's Exhibit No. 38 and were received in evidence.]

Mr. Anderson. Now, Mr. Miller, you were familiar with Judge Hastings' practices at that time, were you?

Mr. Miller. Yes, sir.

Mr. Anderson. In your view, had he read the *Martino* decision before he took the bench?

Mr. Miller. Very, very doubtful.

Mr. Anderson. And he had your memoranda and whatever time you had with him before he went in on that issue; is that correct?

Mr. Miller. He was familiar with *Martino.* I had told him about it. It was in my memoranda. I even briefed him a bit on the facts, I think, of the *Martino* case. It was an arson case; it was a RICO case. I strongly doubt whether or not he actually pulled out the book and read the *Martino* opinion.

Mr. Anderson. Now, after that hearing, what was your understanding of the status of the motion to reconsider the forfeiture, Mr. Miller?

Mr. Miller. My understanding was that it was still an open subject; that notwithstanding *Martino,* notwithstanding Mr. Sonnett's argument that *Martino* controlled, we gave a lot of credence to the argument that was being made by Mr. Deichert for the Government that it was an improper handling of the forfeiture situation by the Fifth Circuit; and that there might be an *en banc* hearing on it. And there was no doubt in my mind, there was no question in my mind that there was no definitive ruling by the judge.

Now, I know about the transcript of the hearing, and I have read the words, and I have seen where Judge Hastings has affirmed himself. But notwithstanding that, before we went on the bench, there was a clear understanding that he was not going to make a ruling; he was going to reserve on that point; that when he came off of the bench, there was no doubt in my mind that he looked at me and I looked at him, and I said, "Look, I am going to keep working on this thing." And that was fine.

I cannot explain why he said what he said on the bench, but that was definitely not my understanding of what I was to continue to do.

Mr. Anderson. Well, let me show you what I have marked Respondent's Exhibit No. 39 for identification and see if you can identify that.

Mr. Miller. Yes. This is a copy of the notes that I took during that July 8th hearing.

Mr. Anderson. Do your notes indicate what you understood to be the disposition of the motion for judgment of acquittal or new trial?

Mr. Miller. Yes. The second page, 7148, indicates motion for new trial denied. It is "m/n-t" denied.

Mr. Anderson. That was your standard way of dealing with that?

Mr. Miller. That is right. And preceding it were some of the arguments that had been made by Mr. Sonnett and the Government.

Mr. Anderson. Do your notes indicate any indication that you understood that the motion to reconsider the forfeiture had been denied?

Mr. Miller. No. It does not say it was denied; it does not say it was affirmed. The only reference it makes other than my notes of their arguments as to the final disposition was on the last page where it says stay of forfeiture, which indicates to me that the forfeiture was still being stayed. And I will say it again. I cannot explain why it is that the judge said that. I do not recall hearing it, and I certainly would not have taken the time and spent the amount of time and effort that I had after that hearing researching it, preparing the order, preparing the workup, if the judge had simply affirmed. Because the original forfeiture order was prepared by Jim Deichert, it was signed by the judge in exactly the way that Deichert had submitted it; and if all that was required was a simple one-line affirmance, Deichert could very simply have submitted the order.

As a matter of fact, now that I think about it, I think the local rules of the Southern District of Florida require that a party who prevails on a motion when the judge rules orally is to submit an order. And I do not recall Jim Deichert submitting an order after that hearing. I just do not recall that.

Mr. **ANDERSON**. And in any event, if the judge had at any time—or did the judge ever in the course of your practice come to you and say, "Jeff, I have decided to deny the motion"?

Mr. **MILLER**. Did he ever come and say that?

Mr. **ANDERSON**. Yes. Not on this case, on any case. "Jeff, I have heard the arguments. The motion to reconsider will be denied." I am not talking about *Romano* now. I am talking about in your practice.

Mr. **MILLER**. Sure.

Mr. **ANDERSON**. How long does it take you to prepare an order doing that?

Mr. **MILLER**. An hour. I mean, it is perfunctory. You do not need to put any thought or any reasoning in motion denied, or I am affirming a prior holding.

Mr. **ANDERSON**. Excuse me, Mr. Chairman, if I might inquire of Mr. Bryant, did you move the draft order into evidence?

Mr. **BRYANT**. Yes, I did.

Mr. **ANDERSON**. So that is in evidence?

Mr. **BRYANT**. It is.

Mr. **ANDERSON**. Mr. Chairman, at this time, I would move Respondent's Exhibit No. 39 into evidence. Those are the notes that Mr. Miller made immediately after the hearing.

The **CHAIRMAN**. Is there objection to Respondent's Exhibit 39?

Mr. **BRYANT**. No objection.

The **CHAIRMAN**. It will be admitted.

[The document referred to was marked Respondent's Exhibit No. 39 and was received in evidence.]

Mr. **ANDERSON**. Now, Mr. Miller, do you recall having status conversations with Judge Hastings concerning the status of that order between July 8th and August 27th? And let me refresh your recollection and say it has been stipulated as a fact in evidence that the *Peacock* decision was issued on August 27th. Do you have any recollection of conversations about this between them?

Mr. **MILLER**. I am sure that from time to time the judge would have wanted to know what the status was, of not only that case. I do not recall the judge coming back and saying, Well, tell me about the *Romano* case. It might have been: Give me an update of what you got, what is pending, things you are working. And I would have in the course of those conversations just brought him up to date.

Mr. ANDERSON. Now, the *Peacock* decision was issued on August 27th. To your best either recollection or based upon the ordinary practice, when would you have received the slip opinion in that case?

Mr. MILLER. I think they mail them out fairly soon after the decision is rendered. I probably would have gotten it either the end of August or after Labor Day weekend, if the Labor Day weekend was that last week.

Mr. ANDERSON. And do you recall bringing that case to the judge's attention promptly?

Mr. MILLER. Yes.

Mr. ANDERSON. Why?

Mr. MILLER. Because it had some significance to the case, to the *Romano* case.

Mr. ANDERSON. Well, what was the significance, in your view?

Mr. MILLER. The significance was that the *Peacock* court said that they were not writing on a clean slate, I think was their words, and they were duty-bound to follow *Martino*. And I do not recall if *Peacock* reversed forfeiture or affirmed denial of forfeiture. But in any event, the message was clear based on *Peacock* to me that we had to give some of the money back.

Mr. ANDERSON. Would that also have undermined any basis for your waiting for the court to go *en banc* or anything like that?

Mr. MILLER. It was another panel's decision coming out and saying: Follow *Martino*. It is the law, it is the law of the land. One panel has to follow another panel. The district court should follow the Fifth Circuit, although there was some reference in it that there was a motion, again, which affirmed in my mind what Deichert had said, that there was a motion for rehearing *en banc*, and I think maybe even a suggestion of rehearing *en banc* of the *Martino* case. But at that point in time, it had not been acted upon, and I was still hoping perhaps that something could be done.

Mr. ANDERSON. And when you brought that to the judge's attention, how did he respond?

Mr. MILLER. Again, the judge said, "Don't agonize." I was agonizing over it. I mean, I truly was. I felt as though the Government was right. I felt Jim Deichert's position was right, that the judge should not return the money, that that was not the intent of Congress in enacting the racketeering statute, and that the *Martino* and *Peacock* cases were wrong. And I relied upon Deichert's arguments, and I think they were correct ones. And I was agonizing over it, and the judge said, "Don't agonize over it. Don't knock yourself out." I mean, if you have got to give it back, give it back. I mean, it is as simple as that.

Mr. ANDERSON. Now, that—I believe your prior testimony has been, but let us confirm it here—would in any event have occurred early in September?

Mr. MILLER. Yes.

Mr. ANDERSON. Now, between that date and September 30th, do you have any specific recollection of further conversation between your judge and you addressed specifically to the *Romano* case?

Mr. **Miller**. I do not remember if it was another conversation or if it was still within that discussion in early September, but we discussed it. You know, he made some type of reference that if we did give the money back there was going to be some publicity, some play in the press. There was a reporter from one of the local newspapers who was coming around who was interested in whether or not the Romanos were going to get some of the property back. The restaurant which they owned was in Hallandale. They lived there, so there was some interest in the local press.

Mr. **Anderson**. In how that order would come out?

Mr. **Miller**. Yes.

Mr. **Anderson**. You did recall when Mr. Bryant asked, and on prior occasions you have been asked, that on October 5th the judge had affirmatively approached you and said, "Jeff, what is the status of the *Romano* case"?

Mr. **Miller**. That is true.

Mr. **Anderson**. Do you have any recollection of the judge making a similar approach at any time between early September and October 5th?

Mr. **Miller**. Yes. Well, not with respect to the *Romano* case.

Mr. **Anderson**. Not with respect to the *Romano* case?

Mr. **Miller**. No.

Mr. **Anderson**. Jeff, in the course of your practice, you indicated the judge had never asked you to get an order out that date or do something when there was not a legal deadline. Had he done so in other cases?

Mr. **Miller**. There were certainly other cases that had been sitting around for some time that had to be done, that he said do it, and I think—I testified in the grand jury, I testified on prior occasions that there were some cases that had to be done, just by virtue of the fact that I was leaving and they had to be done. And if I did not do them, they would not get done. The judge had a similar unpleasant experience. When I came on board, the law clerk whose place I took had some personal problems and was unable to finish some work on motions for new trial and whatnot in a big case, meaning a big civil case. It was a multimillion dollar verdict. It was a long trial. It caused a lot of problems for the judge and for the litigants, and he did not want that to happen again.

And so he did tell me on other occasions with respect to other matters: What's the story? Get it done. Get it done now. Simple as that. And, yes, it was unusual. It was all unusual. It was unusual that I would be leaving short-term. It was unusual that I would not have finished the work previously. Some of it was my fault; some of it was partially his fault on bench trials where he had to do the findings of fact. And I kept saying, "You've got to do the findings of fact. I cannot do that for you. I was not there."

Mr. **Anderson**. But coming back again specifically to the period from early September through October 5th, I think you testified on direct that you do recall Mr. Deichert specifically calling you about the *Romano* order?

Mr. **Miller**. No question about it.

Mr. **Anderson**. And about how many times did he call you on that?

Mr. **Miller**. Between what dates?

Mr. ANDERSON. Subsequent to *Peacock* and your discussion with the judge and October 5th.

Mr. MILLER. I cannot recall how many times he called, but it was more than once. And it was always friendly. I mean, it was always, Jeff, what's the status of the order? And I would say it is in the works, it is coming.

Mr. ANDERSON. Did he ever discuss with you the idea of getting it published? Do you recall that?

Mr. MILLER. Yes, yes. And it was my idea to go ahead and have it published.

Mr. ANDERSON. And did you——

Mr. MILLER. I think it was published, was it not?

Mr. ANDERSON. Yes.

Mr. MILLER. Yes.

Mr. ANDERSON. Did you view Mr. Deichert's calls as, in effect, urging you, as much as one urges a judge's law clerk, to get the order out?

Mr. MILLER. He was anxious. Yes. I mean, there are situations—I am a trial lawyer, and there are situations where I have had motions pending for some time and I am anxious because I think I have got a winner for whatever reason. And if you do not get a ruling, you call the judge. You call the judge's chambers. You call and say what is the story. You try to jog them a little bit. Maybe it is sitting in a pile. Maybe it is——

Mr. ANDERSON. But your perception was that in September 1981 Jim Deichert was jogging you to shake that order loose?

Mr. MILLER. No question about it. He will not deny that. Will he?

Mr. ANDERSON. In this day and age, I am not quite sure any more.

Now, Mr. Miller, had the judge approached you on—you had your draft order substantially complete, I think you have established with Representative Bryant, some time before the end of July; is that correct?

Mr. MILLER. Right.

Mr. ANDERSON. On any day between September 12th and September 30th, had Judge Hastings walked up to you and said, "Jeff, what's the status of *Romano*? I want it out now, I want it out today." What would have happened?

Mr. MILLER. I would have got it out then. I would have got it out that day.

Mr. ANDERSON. And it would have caused you no more difficulty on any one of those days than it ultimately did on October 5th?

Mr. MILLER. That is true. The work was substantially completed.

Mr. ANDERSON. Now, Mr. Miller, you served in the judge's chambers for an entire year. Over the course of that year, did you develop an opinion about the judge's interest in money, the financial aspects of life, what he did with himself? Did you have an opinion on that?

Mr. MILLER. I had the opportunity—of course knew something about his reputation before I went to him to interview for the job, and after I started working for him of course had the opportunity to talk to a number of attorneys, friends of mine, who knew him, knew of his reputation. I had the opportunity to speak a lot of time with him during that year. Travelled with him, on occasion, outside of Miami, to Fort Lauderdale, West Palm Beach, down to Key West on one occasion. Had been to his house—I say "house", a small two-bedroom rented condominium in Lauderhill that he shared with his mother—on a number of occasions, and worked with him a lot.

Yes. I was able to form an opinion as to his character, and the import of money, and I can tell you, without hesitation, it was not on the top of his list of priorities.

If Judge Hastings wanted to have money, he could have had a lot of money. He was one of the first black attorneys practicing in Fort Lauderdale. He practiced with an attorney who money was more important to, and who went on to become a very wealthy attorney, who still is practicing in Fort Lauderdale, a very well-respected, very politically-attuned attorney.

I would say, in the list of, order of priorities on Judge Hastings' agenda, based on my opinion, and my observations, that first and foremost he was devoted to his mother, his son. I think second, to his community, his people; not just the Broward County and south Florida community, but the black community.

He spent an inordinate amount of time, an ungodly amount of time traveling, talking, speaking to those people who he wanted to reach out to, who I think he wanted them to look at him as an example.

Anyone who would ever come to his chambers could have seen on the walls, the walls were just—there was not room for wallpaper on the walls. The plaques. The gratitudes. The "thank you" from the people who he had met and spoke to through the years.

And I think third on his list probably was serving as a Federal judge. I think that was maybe—and I am speaking for myself. I cannot speak for Judge Hastings. But money, certainly never. Not anyone did I ever talk to about him, not anything that I ever saw, suggested in any way that money was ever important to him.

As a matter of fact, it is my understanding and belief, that the salary he was making as a Federal judge was probably more than he ever made in any year that he ever was a practicing attorney.

I mean, his reputation as a trial attorney in Broward County was well-known. An excellent trial attorney. Many of the cases that he handled, that I am aware of, he got no money. No pay.

Mr. ANDERSON. It infects our side of the room. Jeff, did the time he spent speaking and traveling interfere with his performance of his duties as a Federal trial judge?

Mr. MILLER. Never. Never. As I said, when he was in town—and this is what I was alluding to earlier—when he was in town the man worked like an animal, literally. He was on the bench in the morning. He worked till night. He lived in Fort Lauderdale. Our chambers were in Miami.

He would drive early in the morning, and go home late at night, and he was on the bench, working constantly. And then he would leave—he would recess at 5:00 o'clock some nights in the middle of trials, and he would fly off some place.

He would fly off to East Oshkosh, or God knows where, give a speech and come back the next day. He may start a little late in the morning, but in the middle of his trials he was out doing this kind of thing, and perhaps as a result of that he relied a little more heavily on his staff, on his law clerks—myself and the other law clerks—to assist him in the day-to-day functioning, briefing him, and whatnot.

Mr. ANDERSON. Jeff, you have had almost eight years to reflect on this. What have you been doing for eight years, in your professional life?

Mr. MILLER. Well, I have been practicing as a trial attorney.

Mr. ANDERSON. Do you have a specialty?

Mr. MILLER. I am a trial attorney. I consider that to be a specialty. Up until about two years ago, my practice was limited primarily to criminal defense work, and of that, I would say that probably eighty or more percent of that was in Federal court.

I had done, early in my career, a lot of court-appointed cases, a lot of CJ appointments. Got a lot of experience, a lot of trial time. The past two——

Mr. ANDERSON. Over the course of that time, have you had an opportunity to appear before Judge Hastings and other judges in the Southern District of Florida?

Mr. MILLER. I have appeared before most of the judges in the Southern District of Florida, including Judge Hastings.

Mr. ANDERSON. And have you had occasions to converse with Judge Hastings, with your trial lawyer colleagues, about Judge Hastings and about the other judges in the district?

Mr. MILLER. I have had occasion to discuss Judge Hastings and other judges with other attorneys, as we oftentimes do.

Mr. ANDERSON. Do you feel that you have an adequate basis to express an opinion about Judge Hastings' reputation as a judge, a man, and his integrity?

Mr. MILLER. I certainly do.

Mr. ANDERSON. Would you tell this committee about it.

Mr. MILLER. Yes. Judge Hastings is a well-respected trial judge in the Southern District of Florida. He is loved by a lot of people. A lot of attorneys. A lot of non-attorneys.

While he did have a reputation, early on, as being perhaps more lenient as sentencing goes, there never was a complaint that I ever heard, or was ever expressed to me by anyone—either Government or private attorney—that the judge was not an able and capable, and qualified trial judge. And I will tell you my own personal opinion, and the reputation that he has with respect to that is. He was, and is—he still is. He is still a judge. He is a "lawyer's judge".

This is a man who recognizes the difficulties of running a practice of law. This is a man who has not forgotten where he has come from. He remembers what it is like to practice law. He remembers what it is like to have to deal with clients, to be fair to both sides of any case, be it civil or criminal, and his reputation, as far as that is concerned, is consistent with my opinion of him, which is that he is a fine judge, an exemplary judge.

And I will tell you that if we lose Judge Hastings as a judge, it will be a sad day in the Federal court for south Florida. It will be a sad day.

Mr. ANDERSON. I have no further questions, Mr. Chairman.

The CHAIRMAN. Is there redirect examination of the witness?

Mr. BRYANT. Yes, there is, Mr. Chairman.

REDIRECT EXAMINATION

Mr. **Bryant**. Mr. Miller, your characterization of Judge Hastings was impressive.

Mr. **Miller**. And true.

Mr. **Bryant**. Was Judge Hastings—he was the kind of fellow who would help a friend, is that correct?

Mr. **Miller**. No question about it.

Mr. **Bryant**. If he would help a friend without hurting somebody who did not otherwise deserve to be hurt, he would do so, is that correct?

Mr. **Miller**. Judge Hastings was the kind of a fellow, in my opinion, who was never a taker. He was never an asker. He was always a giver. So, to the extent that a friend needed something that he had, that he was able to give, I believe he is the kind of fellow that would give it.

Mr. **Bryant**. Thank you. You testified that you understood that Judge Hastings intended to reserve his ruling on July 8th.

Are you aware that Judge Hastings has testified at his own trial as follows? The question was put to him: "Well, the forfeiture in *Martino* is decisive as far as the *Romano* case is concerned, is it not?"

Answer: "Most assuredly." "And the forfeiture in the *Martino* is all of three pages, is it not?" Answer, from the judge: "We have just gone over that."

And the question to him was: "And you never read them?" And the answer from the judge was: "I didn't tell you that I didn't read forfeiture. I told you that I rely very heavily upon my law clerk and upon the submissions that he rendered to me, were critically important to me."

Mr. **Anderson**. Objection. I think, Mr. Chairman, he is reading from Judge Hastings' testimony which had occurred at a time when Mr. Miller was not present. I take this to be testimony without a question on it. This is redirect.

The **Chairman**. I assume that there will be a question posed here right away, and, if there is, the witness can respond to it.

Mr. **Bryant**. Continuing my reading. "And that is the primary reason that I was vitally concerned about the *Romano* order in the first place, because I did not have in my head all of the particulars of what I considered to be a very complex subject."

Question: "Do you know of any aspect of that opinion other than the three pages that I've pointed out to you, that concern the forfeiture?" "No, I do not, Mr. Weingarten," was the answer.

Question: "July 8, 1981 sentencing, Judge Hastings affirms forfeiture order. Is that a fair characterization?" Answer: "That is correct."

Mr. **Anderson**. Mr. Chairman, I object. I stipulate Manager Bryant can read and read well, but is there a question coming down? This is redirect. It is not cross.

The **Chairman**. Does counsel have a question to put to the witness?

Mr. **Bryant**. I do. Does what I have just read change your expression of your opinion a moment ago, that the judge intended to reserve his ruling on July 8th?

Mr. MILLER. It does not change my testimony one lick. I am telling you—and I have told everybody that I have been in front of for the past eight years—when I briefed that judge before he went on the bench, that was an open issue, and when he came off of the bench it was an open issue.

Mr. BRYANT. That is not what he said in his trial, is it?

Mr. MILLER. Listen. I see what you see there. I am telling you the best of my recollection. I am telling you what I recall went on. Do I know what was in his mind at the time? I can only tell you what it was that we discussed.

I can only tell you what it was that he had me do on the case, and I am telling you, that when that was pointed out to me, that testimony, somewhere down the road, I nearly fell off the chair. I just did not—it was a surprise to me.

Mr. BRYANT. But the judge did say something quite different than what you recall, is that correct?

Mr. MILLER. I have heard what his testimony was just now.

Mr. BRYANT. Well, please answer my question. You will be given plenty of time by these Senators to expand. I am not going to cut you off, but——

The CHAIRMAN. Counsel will allow the witness to answer the question as he sees fit.

Mr. ANDERSON. Mr. Chairman, again, I object. It is not clear to me that Mr. Miller has been told what transcript he is being read to here from now. He was at the trial, and this case involves, were we to stack it up and admit the whole record, I think we could probably cover the front table with transcript.

I mean, I do not understand it. But if we are going to confront the witness with transcript let's confront him with transcript. This is too complex a case. I object.

The CHAIRMAN. The objection is overruled. If the witness is uncertain about what the question is, he can state so. If he understands the question, he can respond.

Mr. MILLER. No, I understood the question, and I understood that that was the judge's testimony from his trial—believe it was—and I think the question was, does that change my testimony, and the answer is it does not.

Mr. BRYANT. But my last question was, will you not acknowledge that his testimony at trial was different than what you just told the committee?

Mr. ANDERSON. Objection. Leading, and calling for a conclusion that is irrelevant. That is a leading question. This is redirect, not cross.

The CHAIRMAN. The objection is sustained. The question has been asked and answered in several forms.

Mr. BRYANT. Mr. Miller, with regard to your characterization of that July 8th order, I just raised the testimony of Judge Hastings to you. Now let me ask you this question.

Are you aware that Neal Sonnett appealed from Judge Hastings's ruling from the bench on July 8th, affirming the May 4th forfeiture order?

Mr. MILLER. I'm not sure I understand the question. I know there were appeals in the case.

Mr. **Bryant**. Are you aware that Neal Sonnett appealed from Judge Hastings' ruling from the bench on July 8th, affirming the May 4th forfeiture order?

Mr. **Miller**. My best recollection is that he filed the notice of appeal—is that what you mean?

Mr. **Bryant**. He appealed.

Mr. **Anderson**. Objection. That's a legal conclusion, and he's cutting off the witness. Mr. Bryant knows he——

The **Chairman**. Objection is overruled. The witness can go ahead and complete his answer.

Mr. **Miller**. My best recollection is that Neal Sonnett had not filed any briefs with the Fifth Circuit prior to the entry of the written order in October. That's not my understanding.

Mr. **Bryant**. Did he not file a notice of appeal from the July 8th order, which you had characterized previously as not having been a decision by the judge, but having been left open?

Mr. **Miller**. My best recollection is that he filed a notice of appeal.

Mr. **Bryant**. Very well. Now, you would not file a notice of appeal from something that had been left open, would you? You would not file that until it had been decided, isn't that correct?

Mr. **Anderson**. Objection. Leading.

The **Chairman**. The witness can go ahead and respond to the question.

Mr. **Miller**. Given the transcript and given what Judge Hastings said in that transcript, Mr. Sonnett apparently had better hearing and recollection than I did at the time, so it would not at all surprise me that Mr. Sonnett, being the careful attorney that he is and the well-prepared attorney that he is, would file a notice of appeal so as to not waive any appellate rights that he might have had. I mean that's rule one, as a lawyer, don't miss time deadlines, especially notices of appeal which could divest the appellate court of jurisdiction. It is the quickest way to be sued for malpractice.

Mr. **Bryant**. Have you read in the past the transcript from the *Romano* case that we have been discussing?

Mr. **Miller**. I'm sorry?

Mr. **Bryant**. Have you read the transcript of the *Romano* case with regard to the hearing of July 8th we've been discussing here?

Mr. **Miller**. You gave it to me over the weekend, I read it over the weekend, yes.

Mr. **Bryant**. All right. Then you would not be surprised if I read you from the beginning of line 9, page 65, quoting the judge, that says, "All right"——

Mr. **Anderson**. Mr. Chairman, the fact he has read it does not make his recollection, the fact that he read it over the weekend does not make him a witness. This is testimony in an unrelated area, just designed to break up this witness.

The **Chairman**. The objection is overruled. Counsel can go ahead and complete the question, if it's not too long.

Mr. **Miller**. I know the passage you're reading from one. That's the one where the judge said he's affirming himself.

Mr. **Bryant**. He says, "All right, I'm prepared at this time to deny your motion, Mr. Sonnett, and I will give a brief written order with reference to the request. I will allow the forfeiture as previously set out by the court to be maintained and, as indicated, a brief order will be prepared that will recite the reasoning of the court, at least insofar as the new matters that have arisen, more specifically the cases cited by counsel up to this time." Is that your recollection of what the judge said at the time of the July 8th hearing?

Mr. MILLER. No. I told you, I didn't recall him saying that. I don't know if I was in the courtroom at that time or not, but I am certain it's there, that he said it, but I am certain that it's there, that I was still looking at the matter.

Mr. BRYANT. Furthermore, didn't what I just read to you suggest that it was the court, not Mr. Deichert, that was to prepare the order?

Mr. MILLER. It says it, no question about it. I'm not disputing what's in that transcript, but I'm telling you, I'm not—my testimony stands as far as that issue is concerned, it does.

Mr. BRYANT. You will agree that I have, on three occasions here, presented pretty strong arguments with the accuracy of your recollection of that particular event, would you not?

Mr. ANDERSON. Objection. He's arguing with the witness.

The CHAIRMAN. The objection will be sustained.

Mr. BRYANT. Mr. Miller, did you prepare a memo for Judge Hastings prior to the July 8th hearing that discussed the *Martino* case? I believe you've already testified with regard to that.

Mr. MILLER. I believe I did, yes.

Mr. BRYANT. That was House Exhibit 119. Do you recall that having been shown to you a moment ago?

Mr. MILLER. Yes.

Mr. BRYANT. Did you give that memo to the judge on the morning of July 8th?

Mr. MILLER. Yes, that's what I testified to, yes.

Mr. BRYANT. You also, I think, said you discussed its contents with him prior to the hearing, is that correct?

Mr. MILLER. Yes, to the extent that I had the time to discuss it with him, yes.

Mr. BRYANT. All right. Turning to the third page of that memo, which is numbered 007026, would you read out loud the last paragraph of that memo?

Mr. MILLER. Sure. "To forfeit the Sea Inn, an enterprise, you must conclude that it was acquired by using income"—underlined—"derived from a pattern of racketeering activity. It surely was. However, if you now classify the moneys derived from counts one and six as income"—underlined—"then *Martino* says that the other incomes are not"—underlined—"forfeitable, only the interests in the enterprises." And then my comment, "Oy vay."

Mr. BRYANT. By this, did you mean that the *Martino* case called into question the forfeitures under counts 1 and 6 of the *Romano* indictment?

Mr. MILLER. What I meant by this was it was confusing, and what I meant by this was that the Sea Inn forfeiture probably should stand, even under *Martino*, however, the operative fact with respect to forfeiture under counts 1 and 6, which was directly affected by *Martino*, the judge had to make a finding that if the money was income, then it's not forfeitable, but if the money was an interest in an enterprise, which I think was defined by an association, in fact, of the two brothers Romano, then it wasn't or that it was—I'm still confused about it.

Mr. BRYANT. Well, it called into question the forfeitures, is that correct?

Mr. MILLER. Yes. Yes.

Mr. BRYANT. Let me direct your attention to the 7th page of your memorandum marked 007030, House Exhibit 119, and ask you to read the third paragraph.

Mr. MILLER. "Are we playing games with semantics? What is the difference between an interest acquired by an enterprise and the income of an enterprise? The former forfeitable and the latter not."

Mr. BRYANT. Now, during the hearing on July 8th, didn't Judge Hastings repeat that language?

Mr. MILLER. Oh, I don't know if he repeated it verbatim, but I think you pointed out to me on Friday where he used similar language, the semantic-type language, playing games, et cetera, which was part of his brilliance, I think.

Mr. BRYANT. If you read in that transcript that he had said "folk ought to stop playing semantic games, for in statutes, for example, if Congress intended something, they ought to just say that and not have us going around and around on interest acquired income versus an interest," et cetera, et cetera. Would you recognize those words as having been quite similar to your own in the memo?

Mr. MILLER. Sure. That only led me to believe, from reading that transcript, that the judge did in fact read this memoranda or had it on the bench and was perusing it and had considered it before taking the bench. He may not have been an expert on racketeering when he took that bench, but he certainly knew enough or had enough of the case law and buzz words in front of him to give the impression to the attorneys who were before him that he was familiar with the cases.

Mr. BRYANT. My last question is, do you know for a fact whether Judge Hastings read the *Martino* case or your memo prior to the hearing on July 8th?

Mr. MILLER. As I said, I gave him the memo, we discussed the memo, it's clear to me, after hearing that comment from the judge from the bench, that he had read at least part of it, and I do not believe that he had read *Martino,* the case itself, prior to the hearing.

Mr. BRYANT. No further questions.

The CHAIRMAN. Is there recross examination?

Mr. ANDERSON. Briefly. Just a moment.

[Pause.]

Mr. ANDERSON. I have a copy with a different marking, if I might show it to the witness, and then I will have the House managers confirm in fact what the exhibit number is that you are looking at.

RECROSS EXAMINATION

Mr. ANDERSON. Mr. Miller, I show you a document which I think is in evidence. That is the draft order you prepared after the July 8th hearing, isn't it?

Mr. MILLER. Yes.

Mr. ANDERSON. And examining that document, is it just your handwriting on it

Mr. MILLER. No, sir.

Mr. ANDERSON. Someone else gave you editorial suggestions on that?

Mr. MILLER. Yes, sir.

Mr. ANDERSON. Who was that?

Mr. MILLER. That was a provisional law clerk that was in the office at the time. His name was Charlester Williams.

Mr. ANDERSON. Where had Mr. Williams come to the office from?

Mr. MILLER. From Washington, DC. He came from a law firm here. Prior to that, I think he graduated from the University of Pennsylvania Law School.

Mr. ANDERSON. And do you know whether Mr. Williams was a member or active in the National Bar Association?

Mr. MILLER. I don't know for a fact, but he was active in a number of black bar associations, and I believe that the National Bar Association was one of those type organizations.

Mr. ANDERSON. And you discussed and consulted with him about the status of the *Romano* case while he was in chambers, did you not?

Mr. MILLER. Yes, sir.

Mr. ANDERSON. When did he enter chambers, if you recall?

Mr. MILLER. My best recollection is spring or summer, spring or summer of that year.

Mr. ANDERSON. And when did he leave?

Mr. MILLER. He left, I believe in September—August or September, he left; he was gone. He moved on to work for another judge in New Orleans, I think.

Mr. ANDERSON. No further questions.

EXAMINATION BY THE COMMITTEE

The CHAIRMAN. Mr. Miller, let me ask you to clarify something in my mind. There are conceivably two things that the Romanos could have hoped for after their initial—after their trial had gone down, and that is I would take it to be a reduction or a change in the forfeiture order, which you have testified to at length here about circumstances on that; second, a reduction of their sentence, and let me just go through each of those and see if I have got your testimony correctly.

The order of forfeiture was first entered on the 4th of May, is that correct?

Mr. MILLER. Yes, sir.

The CHAIRMAN. And then the *Martino* case came down June 19th, and then there was a hearing on July 8th. I guess on July 5th, you had a conversation with the judge, is that right, or the previous Friday to that, July 8th—I'm not sure what the date of that would have been.

Mr. MILLER. July 8th was a Monday, it would have been the 5th.

The CHAIRMAN. Or if July 8th was a Wednesday, it would have been the 3rd or——

Mr. MILLER. I think it—the weekend interceded, that was it.

The CHAIRMAN. At any rate, you had a conversation with Judge Hastings about the forfeiture order.

Mr. MILLER. No, no. What I discussed with Judge Hastings on that Friday——

The CHAIRMAN. Right.

Mr. MILLER. Well, preceding the—let me see if I can get it straight. When I talked to Judge Hastings, it was the weekend before the sentencing was scheduled, and that sentencing didn't happen, nor was there any argument on the forfeiture at that time, because Mr. Sonnett had asked for a continuance and asked for the opportunity to submit additional briefs, which he did in the interim, and that is when *Martino* had come out.

The CHAIRMAN. So, on Friday, before the July 8th hearing, all you folks were focused on was the sentencing itself, and not the forfeiture issue, is that correct?

Mr. MILLER. I would say that's probably right. I would say that *Martino* hadn't been decided at that time, that there was a pending motion for a new trial which would have had to have been dealt with by the judge Monday morning prior to the sentencing, and there may have been a motion directed to the forfeiture, but I will tell you that my recollection is that Marshall Curran, who had filed it—it wasn't Neal Sonnett—directed it to the forfeiture of the Sea Inn, which was the third aspect of the forfeiture, and it never really got focused on the first two aspects, which ultimately really is the issue here, until after *Martino* and until just before the July 8th hearing, when Mr. Sonnett had submitted his additional brief and the Government responded.

The CHAIRMAN. So, the previous Friday, is it fair to say that when you talked to Judge Hastings, you were discussing the sentencing?

Mr. MILLER. We were talking about the sentencing, we were talking about the case in general and his feelings about the case, yes.

The CHAIRMAN. And your testimony was that he said he had some dissatisfaction with some of the Government witnesses, some doubts about their truthfulness, and thought perhaps he would give the defendants probation, is that what you said?

Mr. MILLER. Yes, sir.

The CHAIRMAN. But you don't recall a conversation with him prior to the 8th on the forfeiture issue?

Mr. MILLER. The first conversation we are talking about is in May, right?

The CHAIRMAN. Well, in May——

Mr. MILLER. That would have been——

The CHAIRMAN. OK. Let me get it straight. I may be confused. On May 4th, the order of forfeiture was entered.

Mr. MILLER. That's right, that's when the judge signed the proposed order that was submitted by Mr. Deichert.

The CHAIRMAN. OK. Now, when did this previous Friday conversation come up? Was it before the sentencing on May 11th?

Mr. MILLER. Yes, that's right, May 11th was when the sentencing was originally scheduled——

The CHAIRMAN. Right.

Mr. MILLER. The *Martino* issue hadn't come up, it hadn't even been decided yet.

The CHAIRMAN. All right.

Mr. MILLER. At that time, Marshall Curran was still the main mover and shaker for the Romanos, that on the Friday before the 11th, that's when I had the conversation with the judge, that's when we talked about the sentencing that we had anticipated would happen on Monday but was continued on that day.

The CHAIRMAN. It was continued, and this is before Mr. Sonnett really got active in the case?

Mr. MILLER. That's correct, Sonnett appeared on behalf of the Romanos, apologized to the judge, "I'm sorry to come here, I know that I shouldn't be making this motion at this point in time, but I need more time to familiarize myself with the record, there are other issues that I need to raise on the motion for a new trial." He wasn't really focusing on the forfeiture so much, but it was the motion for a new trial, there were problems—for instance, Marshall Curran represented both of the brothers, there might have been conflict of interest problems, one of the brothers got ill during the trial and there was a video—there were a lot of issues that Mr. Sonnett just hadn't been able to really familiarize himself with.

The CHAIRMAN. So, in trying to sort out what hearings dealt with the forfeiture and what hearings dealt with the sentencing, is it fair to say that your perspective on it was that the May 11th hearing, which was scheduled to complete the sentencing——

Mr. MILLER. It was scheduled to complete everything.

The CHAIRMAN. It was scheduled to complete everything, but it was primarily focused on sentencing?

Mr. MILLER. No, it——

The CHAIRMAN. It did them both?

Mr. MILLER. Senator, I apologize if I'm not making myself clear, but it was my understanding that the judge was going to dispose of all pending motions with respect to the Romanos prior to sentencing.

The CHAIRMAN. Right.

Mr. MILLER. At that time, the motions were filed by Mr. Curran. At that time, the motions were a motion for a new trial, a motion for a judgment notwithstanding the verdict, and I think there was a motion directed to the forfeiture, but it addressed an issue that really never became an issue in the case, it was a non-issue.

On Monday morning or thereabouts, when Mr. Sonnett was in front of the judge, he said, "Judge, I apologize, but I'm just getting into the case, I need more time, I need to brief forfeiture. Mr. Curran did a nice job, but I think maybe there are some things he overlooked, from a different perspective, there are other things that I would like to raise on the motion for a new trial."

The judge said fine. Mr. Deichert said, "Look, I object, but if you are going to give it to us, give me an opportunity to respond as well," and that's when the 15-day and then ultimate scheduling of the July 8th hearing happened.

The CHAIRMAN. The July 8th hearing is when the final sentencing came down.

Mr. MILLER. That's right.

The CHAIRMAN. And at that time, in spite of Mr. Sonnett's getting into the case, and in spite of all the arguments that had been made, the judge had evidently changed his mind on the sentencing from the time you had visited with the judge, prior to the May 11th hearing. Prior to the May 11th hearing, the judge said to you, "I'm thinking of giving them probation."

Mr. MILLER. To the extent——

The CHAIRMAN. On the 8th of July, he gave them three years.

Mr. MILLER. To the extent that our conversation was an indication that his mind had been made up, then he changed it, but he didn't tell me on that prior occasion, "Look, I'm giving these guys probation."

The CHAIRMAN. Right.

Mr. MILLER. He said, "Look"——

The CHAIRMAN. Was there anything that happened between the May 11th sentencing hearing, which determined to postpone the sentencing and postpone any other aspect of the case, was there anything that happened between that May 11th date and the July 8th date that you recall that related to the sentencing, not to the forfeiture issue, that would have impacted on the judge's decision on sentencing, how long to sentence these two defendants?

Mr. MILLER. Other than my comments to him that I didn't think it appropriate, under the circumstances, to give them probation and we talked about it and——

The CHAIRMAN. When did that happen?

Mr. MILLER. That would have happened that Friday.

The CHAIRMAN. That would have been the Friday before May 11th

Mr. MILLER. That's right. We talked about it and——

The CHAIRMAN. But not from the May 11th date until the July 8th date, the subject didn't come up again, he didn't come back to you and say, "You know, we've got to make a final decision on this sentencing, do you have any other thoughts about"——

Mr. MILLER. I do not recall any other conversations with the judge concerning the issue of sentencing.

The CHAIRMAN. Was the subject of the sentencing ever again discussed, to your knowledge, by the judge? Did it ever come up in your conversations with him in connection with this entire case——

Mr. MILLER. No.

The CHAIRMAN [continuing]. As you approached the issuance of the October 6th order? Was there ever any conversation about—when the judge asked you, "Let's get the order out," was there ever any conversation about let's rethink that sentencing issue as well?

Mr. MILLER. Never.

The CHAIRMAN. It never came up?

Mr. MILLER. The only conversations I had with the judge about sentencing was that Friday before May 11th.

The CHAIRMAN. In your view, did the judge still have jurisdiction to change the sentencing of the defendants when he issued the October 6th order?

Mr. MILLER. I think the case was on appeal. I think that the notice of appeal had been filed with respect to the sentence, and if that was the case—and I would just refer to the docket sheet—but if that were the case, then he would not have had jurisdiction at that time, but there is a rule, a criminal rule of procedure, rule 35, that allows, after an affirmance of a conviction within a certain period of time—I think at that time it might have been 90 days or 120 days—that a defendant would have the right to go back to the judge and seek a modification. That rule has since been modified.

The CHAIRMAN. Let me see if I understand. You are saying the sentencing was done on July 8th, three years for each of the Romano brothers.

Mr. MILLER. That's correct.

The CHAIRMAN. And you believe that Mr. Sonnett took an appeal from that sentence shortly after that or sometime after that, is that your recollection?

Mr. MILLER. Well, can I look at the docket sheet?

The CHAIRMAN. Certainly, please.

Mr. MILLER. Right. Here it is, Docket Entry No. 547 and 548–549, here, 549, dated July 14, Romanos, Frank and Thomas, notice of appeal by defendants from final judgment and conviction entered July 8, 1981, copies to the U.S. Court of Appeals, U.S. Attorney, Marshal of Probation, et cetera, counsel of record.

That notice of appeal, the filing of the notice would have, in my opinion, divested Judge Hastings of the power, the jurisdiction, if you will, to entertain a reduction of sentence petition by the Romanos or even to do it on his own. If he had done it, it would have been void.

The only way the judge could have reduced or modified their sentence, based upon my understanding of the rules that were in existence at that time, would have been if the appeal was dismissed or if it was concluded by way of an affirmance, and if it had been affirmed and after the mandate had issued from the appellate court, that by virtue of Rule 35 of the Rules of Criminal Procedure, the judge would have had the jurisdiction for 120 days—well, actually longer, the defendants could have filed their motion to reduce it within that period.

The CHAIRMAN. Now, in this case, the sentence was pronounced on July 8th, the appeal from that sentence was taken on the 14th of July——

Mr. MILLER. Right.

The CHAIRMAN [continuing]. And was there ever—and then your view is that the judge lost jurisdiction when that notice of appeal was filed. The only way he could regain that jurisdiction so that he could modify that order or reduce the order or decide to go back to his original thought about maybe putting these people on probation was if the appellate court had affirmed, in which case he would have had a window of time there in which he could have reconsidered the order, or under—what was the other circumstance?

Mr. MILLER. If the appeal was dismissed.

The CHAIRMAN. If the appeal was dismissed voluntarily by Mr. Sonnett——

Mr. MILLER. That's right.

The CHAIRMAN [continuing]. The attorney for the Romanos.

Mr. MILLER. That is my understanding of the law.

The CHAIRMAN. Had either of those things happened between the 14th of July and the 8th of October or the 6th of October, when this other order came out?

Mr. MILLER. No, but again we are talking about the order, the judgment commitment order, not the——

The **Chairman**. Right.

Mr. **Miller**. I don't think the judge was divested of jurisdiction on the forfeiture.

The **Chairman**. Now, the forfeiture, as I understand it, that issue remained alive after the July 8th decision, and final decision in that or the final order that came out in that case was on the 6th of October.

Mr. **Miller**. Yes.

The **Chairman**. And so no appeal was taken, the judge retained jurisdiction over the question of what to do with the Romanos' property up until the time that that final order was issued?

Mr. **Miller**. Well, the docket sheet reflects that there was a notice of appeal filed, even as to the forfeiture, so it's possible that technically the judge might not have even had jurisdiction in October, given the fact that a notice of appeal had been filed. But as far as I was concerned—and I may be wrong, I may have been wrong now, looking at the docket sheet—the judge might not even have had the power at that time to enter the order.

The **Chairman**. You and Judge Hastings were operating on the assumption that he still had authority in the forfeiture matter?

Mr. **Miller**. Yes, sir.

The **Chairman**. And he could still decide to return the property in order to be consistent with the *Martino* case and the *Peacock* case——

Mr. **Miller**. That's right.

The **Chairman** [continuing]. If he determined to do that?

Mr. **Miller**. And to make good on even his suggestion at the July 8th hearing that he was going to get a written order. I mean there wasn't still a written order to appeal from.

The **Chairman**. But in your mind there was never, after the July 8th decision, there was never any question that the judge was going to stand by his decision on sentencing? I mean that issue had never arose again, he didn't have jurisdiction to do anything about it, if it had——

Mr. **Miller**. There wasn't even a question of jurisdiction, it was a question of we didn't discuss it. He sentenced them, oftentimes—and this wasn't an unusual case, I mean really it wasn't an unusual case, by virtue of the sentence and what he did and his considerations that went into the sentencing. I oftentimes did not know what the judge was going to sentence individuals to, and I know from time to time this judge and other judges change their mind when they are on the bench, they listen to the attorneys, I would like to think, that when I go in front of a judge for sentencing, and I present my witnesses, I make my arguments, that he's listening, and I believe that on occasion I have been successful in convincing a judge that perhaps what he had in mind wasn't appropriate.

And so I do not know what the judge in mind when he took the bench on July 8th with respect to sentencing. I knew he wasn't thrilled with the Government, the Government's case, I knew that he thought they made a big to-do about a lot of—not nothing, but it wasn't as big as they were making it. I didn't know what he was going to do when he gave them three years. Okay, so he gave them three years. I wasn't shocked. There was nothing shocking about that sentence, it was a fair sentence I thought, under the circumstances.

The **Chairman**. It would have been a surprise to you, at least, if subsequent to the July 8th hearing the judge had initiated something to change that sentence, would it not?

Mr. **Miller**. It only would have surprised me to the extent that—I mean if he did that on his own, that would surprise me, because that would not have been the usual course of things. I couldn't recall a circumstance when the judge had on his own changed a sentence without a motion from the defendants. It wouldn't have surprised me—and I will tell you, given the prior conversations I had with the judge and knowing the history of this case, it would not have surprised me that, after the appeal was concluded, if it wasn't reversed, and we will never know because it was reversed on other grounds, but it wouldn't have surprised me if he entertained a motion to reduce the sentence and in fact reduce it. That would not have shocked me.

The **Chairman**. But since the case was reversed on appeal, that opportunity never arose?

Mr. **Miller**. A lot of things didn't arise as a result of things that happened that weren't allowed to run their course.

The **Chairman**. Senator Specter?

The **Vice Chairman**. Thank you, Mr. Chairman.

Mr. Miller, you are aware that the notice of appeal was filed on the same day, on July 14th, from the order and judgment of forfeiture, are you not?

Mr. **Miller**. Yes, sir.

The **Vice Chairman**. Well, how could the court have had jurisdiction to modify the forfeiture order, then?

Mr. **Miller**. If the notice of appeal was improperly filed, perhaps, or——

The **Vice Chairman**. Or if the notice of appeal had been withdrawn or if many other things had happened, but none of that happened, did it?

Mr. **Miller**. Well, if I didn't think we had jurisdiction or if the judge didn't think we had jurisdiction, then I can assure you we wouldn't have spent any time preparing orders or signing them. It would have been a fruitless effort. I don't know why we would have gone to the time—perhaps it's my error and advising the judge improperly that we did still have jurisdiction to——

The **Vice Chairman**. Did you ever advise the judge that he still had jurisdiction?

Mr. **Miller**. I'm sure that I told him that we still had to prepare the written order, if not directly, at least indirectly, implicit in our discussions that we had the power. One of the first things that a law clerk always does or at least that I did when a new case gets filed, was check to see—especially with civil cases—to see if we had jurisdiction. That is question number one, is it diversity, is it a Federal question, do we even have the power to hear this case, because if we don't, don't waste the time with it, dismiss it. So, jurisdiction was something that was always on my mind.

The **Vice Chairman**. Diversity was not involved in this matter?

Mr. **Miller**. No, no. What I am suggesting is that——

The **VICE CHAIRMAN**. Aside from the question of your general practice, do you have the specific recollection that you gave advice to Judge Hastings on the jurisdiction of the court to modify the forfeiture order?

Mr. **MILLER**. No.

The **VICE CHAIRMAN**. Well, you've just looked at docket entries, as have I, and there were notices of appeal filed from both the forfeiture order and the judgment of sentence and, as you have testified, on the judgment of sentence, that divested the court of jurisdiction, you testified elaborately about the circumstances under which the court would regain jurisdiction on the sentencing issue.

Mr. **MILLER**. Right.

The **VICE CHAIRMAN**. But there's nothing in the docket entries to suggest that the court had retained jurisdiction on the forfeiture order after the notice of appeal, is there?

Mr. **MILLER**. Well, Senator, other than the fact that I knew that we had to do a written order, other than the fact that Jim Deichert was calling—he was aware of the notice of appeal as well as I was. If Jim Deichert from the Government knew that we didn't have jurisdiction, why would he have been calling me asking for an order?

The **VICE CHAIRMAN**. Because he was calling asking for an opinion. Mr. Deichert testified that his calls were made to have the court render an opinion which he thought would distinguish *Martino*. So, if you are asking me why did Mr. Deichert call you, I can answer that question because he answered it.

Mr. **MILLER**. OK.

The **VICE CHAIRMAN**. He wasn't asking that the court take some action on which it had no jurisdiction. He was asking that the court enter an opinion, which it could, pursuant to the order imposing forfeiture which it entered when it had jurisdiction.

Mr. **MILLER**. You see, I don't understand the distinction. We either had the power to enter an order or we don't.

The **VICE CHAIRMAN**. It is not an order, it's the publication of an opinion in support of the prior order.

Mr. **MILLER**. Well——

The **VICE CHAIRMAN**. Let me ask you this: Is there any doubt in your mind that the court, that Judge Hastings would have the power, after entering an order of forfeiture and after an appeal having taken, notice of appeal and an appeal, that Judge Hastings could then enter an opinion which would support the previous order which he entered?

Mr. **MILLER**. Now that you raise it, there is no doubt in my mind.

The **VICE CHAIRMAN**. Well, I would suggest to you that the power to enter an opinion would be present after the appellate court has jurisdiction, a point at which the trial court does not have jurisdiction.

But let's come back to your specific recollection about this case. Do you have a specific recollection of discussing with Judge Hastings the jurisdiction of Judge Hastings to modify the order of forfeiture after the appeal had been perfected?

Mr. **MILLER**. I don't have a specific recollection on the jurisdiction issue, no.

The **VICE CHAIRMAN**. Well, you have testified that you have no recollection that Mr. Sonnett notified court personnel of his intent to ask for a continuance prior to asking for the continuance on May 11th. Do you have a recollection that Mr. Sonnett did not notify the court of his intention to ask for a continuance prior to the proceeding on May 11th?

Mr. **Miller**. Well, I do have a recollection that he would not have called us on that Friday that I've just described, because had he called, I would have talked to the judge about it, so I do not recall him calling nor talking to the judge. And I think I asked earlier where it was that the Monday hearing was, whether it was in Miami or Fort Lauderdale, and that might help.

The **Vice Chairman**. You asked but nobody gave you an answer.

Mr. **Miller**. Nobody gave an answer.

The **Vice Chairman**. Well, I don't know.

Mr. **Miller**. I don't know. If it was——

The **Vice Chairman**. A more relevant question might have been what time it was, and it was 1:30 in the afternoon on May 11th, according to testimony already adduced.

Mr. **Miller**. Well, that might be relevant, but not necessarily most relevant, because if it was in Fort Lauderdale, there is no chambers in Fort Lauderdale, so he wouldn't have called me to talk to me in Fort Lauderdale. The best he could have done was called Miami and I could have got a message from Miami. So, if it was in Fort Lauderdale, I might not have even seen the judge until——

The **Vice Chairman**. Mr. Bryant, do you know where it was, whether it was in Fort Lauderdale or Miami?

Mr. **Bryant**. It was in Fort Lauderdale, on Monday.

The **Vice Chairman**. Is that correct. Mr. Anderson?

Mr. **Anderson**. Yes, Senator.

Mr. **Miller**. We don't have chambers in Fort Lauderdale, so if I had testified that he had called me at chambers on Monday—we don't have chambers there.

Mr. **Bryant**. Mr. Chairman, since you asked, he didn't testify that he called in chambers on Monday. He said he called in chambers, which would have had to have been on Friday.

Mr. **Miller**. But I recall that he didn't call on Friday, and I recall that my conversations with the judge were such that we were preparing to go forward on Monday.

The **Vice Chairman**. When you say you recall that he did not call on Friday, it's because you were prepared to go forward on Monday?

Mr. **Miller**. That reason, in addition to reading the transcript of the hearing on Monday.

The **Vice Chairman**. What is there about reading the transcript of the hearing on Monday?

Mr. **Miller**. Well, if you start with I think the first page in the judge's comments to the attorneys, it indicates that he was prepared to go forward and finish the hearing. My——

The **Vice Chairman**. That doesn't necessarily rule out prior notification to Judge Hastings that he had received word that there might be some request for a continuance.

Mr. **Miller**. No, he——

The **Vice Chairman**. What I am trying to focus on, Mr. Miller, is the issue of recollection, which is obviously very difficult. You have testified about this matter many times. It is eight years ago, and I am just trying to ascertain what circumstances lead to your testimony. It is very hard for me to see that there could be an act of recollection as to what did or did not happen on Friday afternoon, May 8, 1981. If you testify that you have an act of recollection, that you received no telephone call from Mr. Sonnett, so be it.

Mr. **Miller**. I understand it. It has been eight years, and I have been through this so many times, and I have tried to testify truthfully on every occasion. And I think if you look at my testimony, it has been fairly consistent throughout the proceedings, and this never was an issue. This date, this May 8th, 9th, 10th, 11th never was an issue that anybody paid much credence to; it wasn't a focus of the original prosecution; it wasn't a focus of the *United States* v. *Hastings, United States* v. *Borders;* it wasn't even a focus of the Investigating Committee's inquiry. It only became a focus when, on Friday, I am talking to the attorneys on this side of the room and they are saying, you know, you talked to the judge, Sonnett called, and bells are going off, flags are being raised all over the place, and I'm saying wait a minute, you know, I'd better take a closer look at this.

The **Vice Chairman**. Do you know when it became a relevant question?

Mr. **Miller**. Apparently during these proceedings, these proceedings, in——

The **Vice Chairman**. Do you know why it became a relevant question?

Mr. **Miller**. According to the attorneys that I talked to, yes.

The **Vice Chairman**. Why?

Mr. **Miller**. There was some indication that——

The **Vice Chairman**. Mr. Dredge.

Mr. **Miller**. Was it Mr. Dredge—that Mr. Dredge might have, he might have said something about something supposed to happen during that period of time—maybe this continuance was another signal.

The **Vice Chairman**. Well, when you testified in 1983 at the trial of Judge Hastings, you testified that personnel in Judge Hastings' office, chambers, had been notified of Mr. Sonnett's attempt to ask for a continuance prior to the proceeding on May 11th.

Mr. **Miller**. It is what it is, whatever I said I said. I don't recall even giving that testimony. I read the transcript, yes, that's what I said. I will tell you that when I recognize that this apparently was becoming an issue of some import, and I said, listen, you have copies, in addition to what you have provided me, in addition to my testimony, do you have a copy of the transcript from the May 11th hearing. Yes, they said, we'll provide it to you. They provided it to me. I asked them what else do you have that might help refresh my recollection. They were most helpful, they gave me everything that they could have to help me.

And when I came in here this morning and talked to them again and they asked me about it again, I said, listen, I told it to them the way I told you, and they said, "well, how do you square it with this other testimony," and I thought I gave them a good explanation, and I said is there anything else that you might be aware of that could refresh my recollection, like what did Sonnett say. I haven't talked to Neal Sonnett about this in all these years, if you can believe it. And I said what did Sonnett say, what does he recall, and I think they told me that his recollection was that he doesn't recall. So, I think that is another indication that my testimony is consistent.

The VICE CHAIRMAN. Well, let's revisit just for a moment your testimony of 1983, where you said that Mr. Sonnett notified personnel in Judge Hastings' chambers in advance of the May 11th hearing that he was going to ask for a continuance.

Mr. MILLER. OK.

Mr. ANDERSON. Senator, could I supply you with a copy of the page of the transcript? I think you are slightly misstating what was read by Mr. Bryant, and there is no reason for confusion at this point.

The VICE CHAIRMAN. Well, another Senator has the transcript. Let me obtain it and I will read it and be exactly precise.

I think I restated it accurately, but let me quote directly from the transcript, at page 679: "After they were convicted, they hired a new attorney, Neal Sonnett, and I believe that Neal Sonnett contacted Judge Hastings' chambers and requested that the sentencing be continued, because he was going to file some post-trial motions, one of which was a motion for a new trial."

Now, I did say "personnel in the chambers," as opposed to "the chambers," because you don't contact the chambers, you contact personnel in the chambers.

Mr. MILLER. That's true.

The VICE CHAIRMAN. Starting at the bottom line—not at the bottom line, start at the conclusion, how would you inform this committee, which is searching for the most rational explanation as to your testimony in 1983, contrasted with your testimony now?

Mr. MILLER. The best I can do to square that statement with my testimony today is that at that time I had a recollection of some contact with Mr. Sonnett. Now, whether or not that meant that he had called Miami on the morning of the 11th and said—to alert us that he was going to be asking for a continuance, whether or not I had seen him prior to the hearing, as oftentimes a law clerk would see if the attorneys are present, if everyone is ready, and I will tell you that it wouldn't surprise me, knowing Neal Sonnett and the type of attorney he is, that he wouldn't just bring something like that on the judge the last minute, so it makes more sense to me, going back and reconstructing it, considering my conversation with the judge on Friday afternoon, where we were going forward, that he wouldn't have called then, because had he called on Friday, he probably would have also filed a written motion along with it. He wouldn't just call and say, look, I'm asking for a continuance. He probably would have filed a written motion to continue, if he did in fact call on Friday.

So, probably what I was recalling in 1983 was some contact with either Mr. Sonnett immediately before the hearing or perhaps his notifying or reaching out for someone in the chambers to let them know——

The VICE CHAIRMAN. In Miami?

Mr. MILLER. In Miami, it would have to be Miami, because they didn't have——

The VICE CHAIRMAN. It could conceivably have been relayed to you in Fort Lauderdale?

Mr. MILLER. Right, that's possible.

The VICE CHAIRMAN. So, the best you can do now is reconstruct 1983 and try to reconstruct 1981?

Mr. MILLER. The best I am doing is reconstructing 1981. I am not reconstructing 1983.

The VICE CHAIRMAN. Well, you are not reconstructing what the testimony, what the transcript shows you testified.

Mr. MILLER. No.

The VICE CHAIRMAN. You are trying to reconstruct why you would have testified that way.

Mr. MILLER. That's right.

The VICE CHAIRMAN. But at this moment, you don't have an active recollection that Mr. Sonnett did notify you or that Mr. Sonnett did not notify you prior to the May 11th hearing. You are testifying that there is no active recollection, just a matter of reconstruction for reasons you have described?

Mr. MILLER. I have a clear recollection of Friday afternoon. It is one of those things that you just don't forget, and I have a clear recollection that Sonnett didn't call, he didn't speak to me certainly, and I was not aware of his request to continue on Friday afternoon. What happened Monday morning, I don't recall, one way or the other.

The VICE CHAIRMAN. On the issue of the special delivery mailing, Mr. Miller, you say that it was not an infrequent occurrence that orders were sent out special delivery?

Mr. MILLER. I have received orders from other judges in the district, for one reason or another——

The VICE CHAIRMAN. Let's stick to orders sent out by Judge Hastings at the time you were his law clerk.

Mr. MILLER. The truth is, the person that could best answer that question would be Marilyn Carter. She had the envelopes, she stuffed them, she sent them out. Why she did it, I don't know. Why she sent something regular, as opposed to special delivery, I wouldn't know.

The VICE CHAIRMAN. Has anybody made available to you your testimony at Mr. Borders' trial, on March 25, 1982, where, at page 640, you testified, "I think subsequently I learned that I had mailed it"—referring to the order, then continuing—"the deputy clerk had given me a pile of mail to mail out that evening, and I subsequently learned that the orders were in that pile"?

Mr. MILLER. I do recall testifying to that and I do recall, I think Marilyn gave me the pile of mailings for the day, including the orders, and I mailed them outside. There was——

The VICE CHAIRMAN. You did not make the designation of the special delivery?

Mr. MILLER. No, I did not.

The VICE CHAIRMAN. And do you know——

Mr. MILLER. Betty Williams was the Secretary.

The VICE CHAIRMAN. Didn't you use the name "Marilyn"?

Mr. MILLER. Marilyn was the deputy clerk.

The VICE CHAIRMAN. And do you know what standards were used by secretary Marilyn to determine which would go special delivery and which would go regular mail?

Mr. MILLER. Betty Williams was the secretary and——

The VICE CHAIRMAN. Did you use the name "Marilyn"?

Mr. MILLER. Marilyn was the deputy clerk.

The VICE CHAIRMAN. I see.

Mr. MILLER. She was the one that was really in charge of getting the orders and getting conformed copies——

The VICE CHAIRMAN. Deputy Clerk Marilyn?

Mr. MILLER. I don't know. Unless I would instruct her to send something out special delivery—and I don't recall necessarily telling her to send this out special delivery.

The VICE CHAIRMAN. Thank you very much.

The CHAIRMAN. Senator Rudman needs to leave in just a few moments. Let me call on him out of order to go ahead with any questions he has.

Senator RUDMAN. I appreciate the courtesy, Mr. Chairman, and I will be brief.

Mr. Miller, your current practice is practice of criminal law?

Mr. MILLER. No, sir, it's primarily now civil. The last two years I have shifted the emphasis on my practice to civil litigation.

Senator RUDMAN. And you have done, I take it, a substantial amount of litigation?

Mr. MILLER. Yes, sir.

Senator RUDMAN. Mr. Miller, do you consider yourself to have an average memory, an above-average memory or a poor memory?

Mr. MILLER. I think I have a pretty good memory.

Senator RUDMAN. Well, then, as we have to decide what weight to give your testimony and various parts of it today, and it is very difficult to recollect from eight years ago, would you say that what you said in a court under oath two years or three years after it happened was probably more reliable than what you said eight years later?

Mr. MILLER. The closer in time, it would seem to me that it would be fresher in my mind at that time.

Senator RUDMAN. So, taking the position that you're attempting to testify truthfully, as I am sure you are, as we review this evidence, and looking at page 673 of a transcript that is dated back at the time of the trial in 1983, about three years after the events or actually less than three years after the events, you said, "The Romanos have been represented in trial by an attorney named Marshall Curran, after they were convicted they hired a new attorney named Neal Sonnett, and I believe that Neal Sonnett had contacted Judge Hastings' chambers and requested that the sentencing be continued, because he was going to file some post-trial motions, one of which was a motion for a new trial," which, I will add parenthetically, he in fact did.

So, that is your testimony two and a half years later, unrefreshed by anyone. Would we be making a grave error in giving that the greater weight out of all of your testimony?

Mr. MILLER. You may be. You may be, because if you look at the question before and after that, that wasn't the issue that they were directed to. When I said I believe that is what happened——

Senator **Rudman**. But I have looked at the before and after, in fact have read your entire testimony, both direct and cross, and that is precisely why I think your recollection is accurate, because it was a very normal question, it wasn't highlighted, you answered it very matter-of-factly, it was your best recollection, it was not a stressful question. Isn't that correct?

Mr. **Miller**. It was not a stressful question.

Senator **Rudman**. All right. Let me go on to one other item, which is of great interest to me and might be to the committee. You mentioned the name of a law clerk who came into the employ of Judge Hastings, I think you said from Washington, DC. And what was his name?

Mr. **Miller**. Charlester Williams.

Senator **Rudman**. And you said he was referred down by a law firm in Washington?

Mr. **Miller**. No, he was not referred by a law firm in Washington. He had come from a law firm in Washington. He was employed there.

Senator **Rudman**. Do you know what law firm?

Mr. **Miller**. It was a big law firm, I don't recall the name.

Senator **Rudman**. Now, you also said that he was a member of the National Lawyers Association?

Mr. **Miller**. He was active with black bar associations. I don't know if he was a member of the National Bar Association or not, although it wouldn t have surprised me if he was.

Senator **Rudman**. But he was active with the various black bar associations that exist?

Mr. **Miller**. Certainly in Florida when he was there, yes, in Miami.

Senator **Rudman**. What was his relationship to you?

Mr. **Miller**. Just a co-clerk, co-worker.

Senator **Rudman**. He came to the office how long after you came?

Mr. **Miller**. Again, my best recollection is six months, maybe. He was there in the spring, spring or early summer, and I had started the prior fall.

Senator **Rudman**. Now, did he make the second clerk or the third clerk?

Mr. **Miller**. Third.

Senator **Rudman**. So, if you got even cases and the other clerk got odd cases, what did he get?

Mr. **Miller**. Overflow, he tried to help us out.

Senator **Rudman**. And did he work on some cases that you both worked on, the two clerks?

Mr. **Miller**. Sometimes.

Senator **Rudman**. Did he work on the *Romano* case?

Mr. **Miller**. It was not his case, no.

Senator **Rudman**. I understand that, but did he work with you in any way on that case?

Mr. **Miller**. Yes, he helped with the orders.

Senator **Rudman**. Was he aware of what was going on in the case, generally?

Mr. **Miller**. I would say probably, yes.

Senator RUDMAN. Was he present at any of your conversations with Judge Hastings regarding that case?

Mr. MILLER. I don't recall a time when he was.

Senator RUDMAN. Being rather specific, the day that Judge Hastings said that he thought he might give them probation, was this gentleman present?

Mr. MILLER. No, he was not.

Senator RUDMAN. And his name again?

Mr. MILLER. Charlester Williams.

Senator RUDMAN. And do you know where he is now?

Mr. MILLER. The last I heard, he was practicing in New Orleans, private practice.

Senator RUDMAN. I would ask counsel for the House, is he on the House witness list?

Mr. BRYANT. We could not find him, Senator.

Senator RUDMAN. I would ask counsel for the respondent Judge Hastings if he knows the whereabouts of that gentleman?

Mr. ANDERSON. No, sir, I don't.

Senator RUDMAN. I think it is quite obvious to the Chair why I asked the question considering the assertions made by Judge Hastings, it would be quite interesting to talk to this gentleman, if he did come from Washington, did belong to black lawyers associations, as to what other associations he might have here in the City of Washington, particularly in respect to Mr. Borders.

Thank you, Mr. Chairman.

The CHAIRMAN. Are there other questions from members of the committee?

Senator Bryan? Senator Bryan, go ahead.

Senator BRYAN. Very briefly, Mr. Chairman, I want to revisit the special delivery situation. I think I understand the deputy clerk and the secretary and the relationship as to the office practice with respect to those two people. But my question to you is, if you know, how many times during the period of your clerkship with Judge Hastings were orders sent out by special delivery, irrespective of who might have ordered them?

Mr. MILLER. I do not know.

Senator BRYAN. Do you have a recollection of other orders having been sent out by special delivery?

Mr. MILLER. I cannot, as I said before today, recall with any specificity an order that went out special delivery, but that is not to say that they didn't.

Senator BRYAN. We understand that it is just your recollection and we all are sympathetic to the fact that there is some eight years that have intervened, but would it be fair to characterize your testimony as being that this is the only special order that you recall, the only special delivery that you recall with respect to an order issued by Judge Hastings during your tenure as a law clerk with him?

Mr. MILLER. I don't think that would be fair to state, but I do not recall—I am telling you that I do not recall, I can't point to case number 324 and say that went out special delivery. I cannot recall a specific circumstance, and I don't even know that this went out special delivery, other than apparently it did, from the tone of the question.

Senator BRYAN. I am not trying to be argumentative, but you can understand that this panel is trying to reconstruct as best we can in making our determination of what occurred during this time period. Clearly, a special delivery order with respect to an order issued by the judge, is unusual, is not part of the custom and practice of the court, there is some significance that we might choose to attach to that.

You were part of the judge's internal operations for a period of time, and what we are asking you or what I am trying to ask you is do you recall during that period of time any other order that went out by way of special delivery, and I take it that your answer is no.

Mr. MILLER. I cannot sit here now and recall an instance, with any specificity, where an order went out special delivery. I don't even know that this one went out special delivery.

Senator BRYAN. This is something that you have been told after the fact?

Mr. MILLER. Only today. I don't recall anyone ever telling me that it went out special delivery.

Senator BRYAN. In reviewing your workload with the judge, was it the judge's practice to call all of the law clerks in at that time, or did he call you individually and say, look, I'd like to get a report on your cases, referring to the even-numbered, or to the other clerk the odd number or the overflow? Did you have meetings, in effect, where the judge had all of the law clerks in, where periodically reports were given to the judge by all of you as to where you were on the various matters he had assigned for you to handle?

Mr. MILLER. Yes, we would from time to time all meet and talk about matters. We would meet—he would come back to the law clerks' offices, he could be discussing a case with the other law clerk in my presence, I could hear and I could hear both sides of the conversation; similarly, he could be talking to me, the other law clerks could hear what was going on, and then there were occasions when we would be all in his office discussing matters of the day and pending matters and what not. There was no set, okay, let's all get together Friday at 3:00 o'clock; it was as things developed.

Senator BRYAN. I think that you have said, in response to questions of the committee, that the conversations prior to the sentencing that you have related occurred prior to the May 11th, as opposed to prior to the July 8th court date, am I correct on that?

Mr. MILLER. With respect to sentencing, yes.

Senator BRYAN. Yes.

Mr. MILLER. Yes, sir.

Senator BRYAN. What type of conversation, if any, did you have with respect to any aspect of the *Romano* case, did you have prior to July 8th, that Friday afternoon? Can you describe that conversation that you had with the judge?

Mr. MILLER. Was July 8th a Friday?

Senator BRYAN. July 8th I believe would have been—July 8th was the date upon which the sentence was actually issued and the judge reaffirmed the forfeiture order, which I think had been entered May 4th, if I recall.

Mr. MILLER. Right. Well, is the question what conversations did I have with the judge prior to July 8th?

Senator **Bryan**. You had a conversation, as I understand it, prior to——

Mr. **Miller**. May, prior to the May 11th——

Senator **Bryan**. I understand that and you have testified to that extensively. What I am trying to ascertain from you is what type of conversation did you have with the judge, if any, specifically about the *Romano* hearing that was scheduled for July 8th?

Mr. **Miller**. The first opportunity that I had and that I recall talking to him about the *Romano* matter that was scheduled for the 8th would have been on the 8th, because the motions and the supplemental motions were coming in still, they were coming in as late as a couple of days before the 8th, the 6th and maybe the 7th. I worked them, I researched them, I prepared by handwritten notes, which is House Exhibit 119, to the judge, and this took me some time. I didn't just whip this out. I had to go through the statute, I had to look at the cases that were cited, it was a complex area, this was the first RICO case that I had worked on.

I recall giving this to the judge sometime on the morning of the 8th. As I said, I recall he might have been on the bench in some other case. We had a brief opportunity before he went into the hearing on the 8th, before he went into the sentencing hearing, to discuss this memo and whatever is in the memo is what we discussed.

Senator **Bryan**. Other than the judge, who else was present at the time that you discussed very generally the *Romano* matter on the morning on the 8th, as you tell us?

Mr. **Miller**. My best recollection is it was just the judge and myself in his chambers, and I can—I know it has been eight years, but I can recall the judge going through the door with his robe on, with the memo in hand, right up onto the bench, and I followed in behind him.

Senator **Bryan**. And my last question is what has your relationship between with Judge Hastings, either personally or professionally, from the time that you left the clerkship?

Mr. **Miller**. I would say that our relationship has been that of an attorney and a judge, although my personal feelings aside, I haven't seen him on a social basis, I haven't called him, I have purposefully stayed away from him. There have been fundraisers when I haven't sent money, although I probably would like to have. There have been gatherings of friends where I have stayed away, so as not to give the appearance of favoritism and what-not.

I have appeared in front of him on a number of cases during that interim. None of those cases ever resulted in a trial, for one reason or another, either transfer to other judges because of low number of transfers, or dismissals by the Government, for one reason or another, I never had a trial in front of him.

Senator **Bryan**. Thank you very much, Mr. Chairman.

The **Chairman**. Senator Durenberger?

Senator **Durenberger**. Mr. Miller, a great deal of the evidence in this trial is going to be circumstantial. Perhaps you have heard earlier about putting weight on various witnesses' testimony is certainly accurate. I wonder if you couldn't help us with a couple of things that I haven't recalled being brought out yet, and maybe they will in the future, but so far we don't know a great deal about the way in which Judge Hastings' office, in effect, operates. We have seen a sketch of the office and we have seen where the pay phones are and we have heard about Marilyn and Betty and some of these sorts of things.

But would you describe for us, in the period of time that you were there, from October 1, 1980 until October 1, 1981, the people who were staff, in effect, to Judge Hastings?

Mr. **Miller**. Well——

Senator **Durenberger**. How did the office operate? Who were the people that were involved?

Mr. **Miller**. The pecking order, if you will? Well, you have the judge, and everybody is accountable to the judge, on the one hand. You have the judge's personal secretary, Betty Williams. You have the courtroom deputy, Marilyn Carter, who—it was never a hundred percent clear to me who she was accountable to, but I think in some respects to the judge and other respects to the clerk of the court. She was a deputy clerk and——

Senator **Durenberger**. And Betty Williams is the person who has already been identified during the course of your response to questions?

Mr. **Miller**. The judge's secretary, personal secretary. She would do the judge's correspondence, dictation, take his phone messages, personal secretary.

On the law clerk staff, there was a senior law clerk, who was there when I arrived, Alan Ehrlich; there was myself, the junior law clerk; at some point in time Charlester Williams; and a host of legal interns who came and went, from either the University of Miami or Nova University, the local law schools, who would come and intern there in the summer or for a semester for credit from the universities, who would——

Senator **Durenberger**. Basically, there is the judge and a full-time staff of four people, is that it, or three plus, depending on how Marilyn relates?

Mr. **Miller**. Well, four full-time staff. The judge, he would have—every judge has a courtroom deputy, every judge has a secretary and two law clerks. At that time, the reason we had the third was there was a judicial emergency declared and the judges were so overworked that they needed some extra law clerk help.

Senator **Durenberger**. And in terms of the office space, I take it everyone was in fairly close proximity to everyone else?

Mr. **Miller**. Very close.

Senator **Durenberger**. And as you described your relationship with Judge Hastings, at least to one who is hearing it for the first time, it would appear that it was certainly a friendly relationship, it was professional, I am sure, but it was also friendly. You described various places that you visited, you visited the judge's home, you went to Key West with him, a variety of other circumstances that would indicate a fairly proximate relationship with the boss, so to speak, is that correct?

Mr. **Miller**. Well, to the extent that he wanted the law clerks to call him Alcee, not Judge Hastings, and I could never bring myself to call him Alcee. I always referred to him as Judge or Judge Hastings. Alan Ehrlich, on the other hand, had no problem to be on a first-name basis with the judge, but that was the kind of relationship that he was—that was the kind of atmosphere that was in the chambers, it was relaxed, there wasn't a lot of pressure, we all knew what we were doing, we all knew that we were trying to help the judge along, because he was the one who was ultimately responsible to the public and to his office.

Senator Durenberger. And in terms of sharing the responsibility for all of the work that goes on in the office, which is the usual variety I think we all experience, I take it that there are times when the clerks were doing the secretary's work, the secretary may have been doing something that the clerk might have done, and it is a variety of everybody sort of carries part of the load at various times during the course of any given day or given week, is that correct?

Mr. Miller. That's exactly right.

Senator Durenberger. Now, you also indicated in your testimony that, by way of describing Judge Hastings' character, his reach-out into community in the larger sense and the more specific sense, I think you referred to the black community, you referred to the Broward County community, you talked about his friends and so forth, and described him as a person who was fairly open in his, not only his friendships but his contacts with a wide variety of people. Is that a fair characterization of your testimony?

Mr. Miller. He knows a lot of people, more people than I could ever hope to know on a first-name basis. And when I said he reached out, it wasn't just to the black community, I mean there were local bar associations that he would speak to, he would work all day and he would go out and speak at these dinners at night, on a regular basis.

Senator Durenberger. And he was active in, among other things, the National Bar Association?

Mr. Miller. I'm sure he was. I don't know how active he was, but I know he was a member—I thought he was a member.

Senator Durenberger. And you would be familiar with this not only since you have been in the office, but during the period of time that you were in the office you would be familiar with all of the many ways in which Judge Hastings reached out to a lot of people and befriended a lot of people and talked to a lot of people, I take it, right?

Mr. Miller. People were always calling. I would say he was a lawyer's judge, he was a people's judge. This wasn't a guy who was sitting in an ivory tower, with his black robe on, looking down at the masses—not to suggest that that is the way the judges in the Southern District are, because that is not so, but this was a guy who the people knew. They knew him as "Alcee." He would go out into the streets, he ~~would go~~ out around town, "Hey, Alcee," "Hey, Judge Hastings," people knew him.

Senator Durenberger. I wonder if you would describe for us, then, what you knew of the relationship between Judge Hastings and William Borders, his classmate and friend in Washington, DC.

Mr. Miller. I did not know that a fellow named Borders existed until after the tumult. I had no idea. I did not know of his relationship, I did not know the name. It was news to me.

Senator Durenberger. ~~And having~~ described, as you have just reiterated, Judge Hastings' outreach to so many people, would it surprise you to know that they were apparently classmates in law school and active together in the National Bar Association and visited back and forth? Would this come as a surprise to you?

Mr. MILLER. No, that wouldn't surprise me at all.

Senator DURENBERGER. Would it surprise you that you would be, during the period of time you were there, unfamiliar with Mr. Borders, given——

Mr. MILLER. That would not surprise me, either. I did not know all the judge's friends, did not know all the people who he met with or spoke to.

Senator DURENBERGER. But you have never, in the period of time that you were a clerk for Judge Hastings, you never met Bill Borders, you don't recall any mention of Bill Borders——

Mr. MILLER. No. That was his private business.

Senator DURENBERGER [continuing]. Any private conversation in the office regarding Borders?

Mr. MILLER. No, sir.

Senator DURENBERGER. How about Hemphill Pride, who I think is or was an attorney in Columbia, South Carolina, do you have a familiarity with that name?

Mr. MILLER. Not until this case.

Senator DURENBERGER. Thank you.

The CHAIRMAN. Are there other questions from committee members? Senator Pryor?

Senator PRYOR. No questions.

The CHAIRMAN. Senator Kerrey?

Senator KERREY. Mr. Miller, you said you graduated in '80 from law school?

Mr. MILLER. Yes, sir.

Senator KERREY. And started clerking immediately after that. So how old were you in 1981?

Mr. MILLER. I started clerking—I graduated in May of 1980, and I started clerking in October of 1980, the same year.

Senator KERREY. So, what does that make you, 24 at the time?

Mr. MILLER. Yes, I guess I was about 24.

Senator KERREY. And you had indicated earlier that there was a number of people asking that this order be written, you said Deichert for one.

Mr. MILLER. Deichert called. There were inquiries—I recall inquiries from other attorneys, not a lot. Not a lot.

Senator KERREY. What other attorneys made inquiry?

Mr. MILLER. There was another organized crime case in front of the judge, another racketeering case that had similar features as the *Romano* case, and I do recall, at least my recollection has been refreshed from looking at my testimony, and I do recall some calls from these lawyers from Chicago, I think called. There was a call——

Senator KERREY. Do you remember their names?

Mr. MILLER. There was a defendant named Accardo or Accardi, his attorney, and I think his attorney had an Italian name as well. I received a call in one instance from some publication, some journal that knew of the existence of the case and was waiting for an order because they were interested in publishing it. Somehow they had gotten the word that there was a RICO forfeiture order and they were looking to publish it. I do not recall the name of the publication or the name of the person who called.

Senator **Kerrey**. And they were inquiring as to when the order was going to come down?

Mr. **Miller**. That's right, has there been an order, when is there going to be an order, general inquiry, not what is going to be in the order. Had they asked that, I wouldn't have told them, in any event, just when is it going to be.

Senator **Kerrey**. And you were getting these calls——

Mr. **Miller**. Infrequently, it was not on a regular basis. The person who called the most would have been Jim Deichert, and then on occasion sprinkled in might have been a call here or a call there over this few month period of time, August–September, over a three-month period of time a handful of calls in addition to Deichert's.

Senator **Kerrey**. And if someone were to call, it was not unusual for you to give sort of a statement as to when you thought the order was going to come down or whether you thought the order was going to come down or——

Mr. **Miller**. That wouldn't be unusual.

Senator **Kerrey**. What would you have said prior to the 5th of October if someone called inquiring?

Mr. **Miller**. I would have said imminent, that might have been a word I might have used, it's imminent, it's coming.

Senator **Kerrey**. Based on what, would you have made the judgment that it was imminent?

Mr. **Miller**. I had it all there, it was done, the work was done, just based on the fact that I knew that if I wanted to be imminent, it would have been.

Senator **Kerrey**. You had your work done, you are saying?

Mr. **Miller**. Yes, the work was the draft of the order.

Senator **Kerrey**. But it was the judge's call to require the order to be written and mailed? You must have had some sense that the order was imminent?

Mr. **Miller**. Senator, if I had finished that order on July 15th and given it to the judge, it would have been signed on July 15th. If I waited until August 15th, it would have been signed on the 15th of August. If I had prepared it, but for my procrastination, but for my waiting for the other reasons that I have already testified to, that order would have been signed, and there is no doubt—I wouldn't say there is no doubt, but I believe that if I had arrived at a different conclusion than the one that was drawn by the ultimate order, I think the judge would have signed that order as well, based upon my experience with him. I almost wish that I had. I almost wish that I had done it differently and then the judge would have told me to change it because then I would be certain. But he didn't, it didn't happen that way.

Senator **Kerrey**. But on the 5th he told you to do the order?

Mr. **Miller**. He wanted the order, yes, sir.

Senator **Kerrey**. And do it in the manner that you had already written it?

Mr. **Miller**. No, he said I want the order. He did not say what the outcome of the order was, he said give me the order, and I'm telling you, sir, based upon the way things were in the chambers that year and that time, if I had given him that order with a different conclusion, I believe, if it was well-reasoned, he would have signed it, and——

Senator KERREY. On the 6th, there is pressure upon you, you feel an urgency to get the order written and mailed?

Mr. MILLER. Yes.

Senator KERREY. An urgency that was exceptional or ordinary?

Mr. MILLER. It was an exceptional as the circumstances were at that time, which is to say that I should have done it a long time before that.

Senator KERREY. Was it ordinary to be getting calls about orders such as this? Was it ordinary?

Mr. MILLER. No.

Senator KERREY. This was exceptional?

Mr. MILLER. It was not ordinary to be receiving calls from the type of people that I was getting calls from over that period of time.

Senator KERREY. Did you feel an exceptional urgency to get this order done? This was not in addition to what you would normally feel towards a task, exceptional——

Mr. MILLER. Yes.

Senator KERREY [continuing]. Exceptional urgency to finish this particular order?

Mr. MILLER. Yes, sir.

Senator KERREY. In the normal course of events when an order like this was done, how would you go home feeling confident that it had been mailed out? Did you just give it to someone and assume, then, that it was done?

Mr. MILLER. Yes, sir.

Senator KERREY. And who——

Mr. MILLER. Mailing out was not really the significant thing. The significant thing was the signing of the order and having it filed with the clerk. At that time, it's public knowledge, and whether it is mailed out special delivery or mailed out regular delivery, unless there was some urgency that I was not aware of, it wouldn't matter.

Senator KERREY. So, filing with the clerk was the key for you——

Mr. MILLER. That's right.

Senator KERREY [continuing]. And dropping it, having it mailed was of no significance at all?

Mr. MILLER. No, getting—well, it was significant to the extent that everyone was waiting for it, Deichert was waiting for it. I mean he was calling——

Senator KERREY. I would like to have you continue. Deichert was waiting for it. Who else was waiting for it? Everyone was waiting for it, you said. Deichert——

Mr. MILLER. The other attorneys that were looking, the publications that wanted it, and I think we mailed it out to be published that night, too. I was proud of the work, I thought it was a good order and I was looking forward to seeing it published, so to the extent that that was urgent, I would have liked to have seen it get out as quickly as possible as well.

Senator KERREY. But you felt no concern at all, having filed it with the clerk, for following through and seeing that it was mailed? Had you discovered the next day that it had not been mailed, other than some additional urgency, you are saying or——

Mr. MILLER. I would have said why wasn't it mailed. I mean I mailed it myself, I stayed late and I mailed it myself.

Senator KERREY. You did mail it yourself?

Mr. MILLER. Yes, I'm certain that I did, along with the other mailed. I stayed late to make sure that it got in the mail.

Senator KERREY. Was that unusual, that you mailed orders yourself?

Mr. MILLER. I mailed orders before. When I was leaving, I pass the mail box, and I would say give me the mail and I'll go mail it.

Senator KERREY. Then we don't have to call the woman that you referenced earlier. In your recollection of mailings that you did on your own, was it unusual to send it special delivery?

Mr. MILLER. Now, you see, I didn't go to the post office with it. Maybe I'm not understanding what special delivery is. I thought special delivery, you got a special envelope and a special kind of stamp on it. All the envelopes in the office were franked, if that's the word, they were already pre-stamped, prepaid envelopes. I put it in the mail box, the regular mail box. Whether or not, by putting it in the mail box, if there was an indication on the letter that it would have gotten special preferential treatment once it hit the post office, I don't know. I put them in the regular mail box, right in front of the corner of the courthouse on the way to my car.

Senator KERREY. Then I don't understand the mail system. In order for it to go special delivery, you could not put ordinary mail and no additional instructions on it and have it go special delivery.

Mr. MILLER. Then it didn't go special delivery, because I put it in the mail box. I did not go to the post office, there was not a post office nearby.

Senator KERREY. It is not unusual for you to mail something on your own?

Mr. MILLER. Not at all.

Senator KERREY. Thank you.

The CHAIRMAN. Are there other questions by members of the committee? Senator Bond?

Senator BOND. Mr. Miller, you were saying that the judge was very busy when he was in court. He was holding court, he was on the bench, he depended upon you to draft all the orders——

Mr. MILLER. Yes, sir.

Senator BOND [continuing]. Or orders were submitted by counsel who had prevailed, is that essentially——

Mr. MILLER. That's true. Yes, sir.

Senator BOND. During that period of October 5 and 6, do you recall, was the judge continually on the bench?

Mr. MILLER. I think he was on the bench, I think he had started another trial, another organized crime-type trial. I think I can recall the attorneys, even. Michael Owens for the Department of Justice, David Rosen for the defense, and maybe the defendant's name was Santorelli, I believe, which was another case that had been pending for some time and there was some urgency to it. That's my best recollection.

Senator BOND. When the judge was in a trial like that, did he have—were there times when he would do any of the orders, or would he literally spend all of his time engaged in the trial effort and leave all the paperwork to you and to the other law clerks?

Mr. **Miller**. I think, as I said, Senator, my recollection is I had given him the written memo to take on the bench. Now, what was going on in the trial during that morning, I don't know. I don't know if he had the opportunity to read it or if the trial required his full attention. It is not unusual at all for judges to be doing other work while they are on the bench presiding over a trial. It is not at all unusual for a judge to be up there signing papers or sifting through things during the course of an examination, and there will be an objection and, "What did he say?" you know, the judge will come back to it.

Senator **Bond**. That is reassuring to know, but it is not without precedent.

Mr. **Miller**. Not in the Southern District, of course.

Senator **Bond**. But did he handle other personal matters, matters associated with his memberships in other organizations on the bench?

Mr. **Miller**. He would have the opportunity to. Whether he did or not, I have no idea.

Senator **Bond**. You would not, then, have any information or any recollection of whether he prepared personal letters, whether you sent out letters that evening, the evening of the 6th which were stamped with personal stamps? I assume he used personal stamps when it was not on official business.

Mr. **Miller**. He certainly would have the opportunity to do whatever he wanted to do while on the bench. If he wanted to write a personal letter, he could have. I have no knowledge of that. If there was a personal letter in that batch of stuff I mailed out, I have no knowledge of it. I am not saying it wasn't there, I am not saying it was there. What I was saying was it was the end of the day, I wanted to get these orders out, I was looking forward to perhaps it being published, I know there were people looking for it. It was there, "Could I take it for you, Marilyn?" "Sure." "I will drop it off."

Senator **Bond**. And you don't remember that they had anything to say about special delivery on it?

Mr. **Miller**. As I am sitting here right now, I don't recall. I do know that when I mailed them, I put it in the regular mail box. It had one side like this [indicating], and then it another thing like for—it was a mail box.

Senator **Bond**. You testified that perhaps other orders had gone out special delivery?

Mr. **Miller**. I'm testifying, I'm telling you that it is possible that there did. I don't have a specific recollection of one going out special delivery. It's not at all unusual sometimes to receive one.

Senator **Bond**. Did you ever take letters to the post office, take orders to the post office for special delivery?

Mr. **Miller**. Never.

Senator **Bond**. Thank you, Mr. Chairman.

The **Chairman**. Senator Pryor, did you have some questions?

Senator **Pryor**. Yes, just very briefly.

Mr. Miller, I want to get this straight, now. You had chambers in Lauderdale and Miami, or just in Miami?

Mr. **Miller**. We had chambers just in Miami.

Senator **Pryor**. Just in Miami.

Mr. **Miller**. We had, if you want to call it, I mean as loose a definition of chambers as you could imagine in Fort Lauderdale, was a closet. It wasn't any bigger than a closet, and Alan Ehrlich, the law clerk, lived at Fort Lauderdale and he liked to work in Fort Lauderdale, and there were all sorts of promises to Judge Hastings that there was a possibility that he was going to get a courtroom in Fort Lauderdale, and he lived in Fort Lauderdale, we had hearings in Fort Lauderdale, but he didn't have chambers by any stretch of the imagination. He didn't have a desk. There was a table, there was a filing cabinet.

Senator **Pryor**. Was there a telephone?

Mr. **Miller**. There was a telephone.

Senator **Pryor**. In Judge Hastings' closet?

Mr. **Miller**. In the closet. I can only recall him being in there once or twice. Nobody spent any time in there except for Alan.

Senator **Pryor**. At Fort Lauderdale, had you ever seen or recall seeing Judge Hastings out in the hall using the pay telephone?

Mr. **Miller**. Where?

Senator **Pryor**. In Lauderdale.

Mr. **Miller**. I can't recall the situation, no. I'm not saying it didn't happen.

Senator **Pryor**. In Miami, do you recall seeing Judge Hastings using the pay telephone in the hall?

Mr. **Miller**. There is no pay telephone in the hallway of the courthouse in Miami. The only pay phone they have is outside coming into the Federal courthouse.

Senator **Pryor**. Did you ever see Judge Hastings outside of the Federal courthouse using the pay telephone?

Mr. **Miller**. I can't say no, but I just don't have a recollection of that happening.

Senator **Pryor**. The final question, Mr. Chairman. In the *Romano* case—and you have stated, I think, in answer to Senator Kerrey that it seemed exceptional that you were getting so many phone calls and maybe used pressure to get this order out and completed.

When you look back at the *Romano* case, comparing it and relating it to other cases that you had had as a law clerk, is there one single distinctive characteristic about this case or reminder you have of a procedure, a process, a motion which was most unusual to you, that distinguished this from other cases?

Mr. **Miller**. The nature of the order or the——

Senator **Pryor**. The nature of the process, the nature of the proceeding, the nature of a motion, the delay or expediting a motion, as you look back over this case, does it ring a bell?

Mr. **Miller**. This case was not an unusual case, the circumstances were not unusual. There were a lot of cases that were tried, there were a lot of cases where sentencings were continued, where post-trial motions were filed, where other counsel were retained. There was nothing significant at all about any of that.

The only significance that this case had, as opposed to some of the others, was that it was almost a case of first impression, but not just a case of first impression, but a new statute, a complex statute, a statute that had far-reaching consequences and, to the extent that there were a lot of people interested in that, it was unusual. To the extent that I didn't do the work when I should have, that was unusual.

Senator **Pryor**. Thank you, sir.

Thank you, Mr. Chairman.

The **Chairman**. Senator Lieberman?

Senator **Lieberman**. Thank you, Mr. Chairman.

Mr. Miller, you have been on the stand for a long time today, and I think the fact that you have is a measure of the way in which the committee is trying hard to come to some understanding of what the truth is here and also of the critical position you were in and some of these turning-point events, and I just want to pursue a few more of them, with apologies to the committee and particularly for taking any more time.

Let me get towards the end of the story first, and that is the forfeiture order. You testified at one point today that you had had at least one, perhaps two, conversations, I believe you said, with Judge Hastings about the forfeiture question in the aftermath of the *Martino* and *Peacock* decisions, in which, as I recall, you said that he basically said to you, because you had agreed with the Government's position on the forfeiture question, Judge Hastings said to you, in light of *Martino* and *Peacock,* don't aggravate yourself, don't fight it, just do the order and we've got to give some of this property back. Is that recollection of mine correct?

Mr. **Miller**. Basically. Again, he said don't agonize, don't kill yourself over it, do the order, if you've got to give the money back, give it back.

Senator **Lieberman**. OK.

Mr. **Miller**. It wasn't as though he said, "Now, Jeff, I'm making my ruling, give the money back and give me an appropriate order." It didn't happen that way.

Senator **Lieberman**. When did that conversation occur, to the best of your recollection? I believe I heard you say earlier it was early September.

Mr. **Miller**. It would have been sometime after *Peacock.*

Senator **Lieberman**. And *Peacock* was in August, as I recall.

Mr. **Miller**. The end of August.

Senator **Lieberman**. So, it would have been early September. My inference from that, and maybe you have just counteracted it, was that essentially the decision had been made by the judge at that point and it only remained for you to write it, so that it was approximately a month from that time in early September until October 6th when the forfeiture order actually was written and issued, that you at least knew what the judge's decision was.

Mr. **Miller**. No, that's not so. I knew what the judge's decision was going to be as soon as I finished the order, and I'm telling you that had I drawn a different conclusion than the one that was ultimately prepared and given to the judge, I believe that he would have signed it.

Senator **Lieberman**. It sounds to me, hearing that, you had an awful lot of influence in that courtroom, because if I was sitting there as a third party listening to Judge Hastings' conversation with you in which he told you not to agonize, don't kill yourself, in the aftermath of those two Circuit Court decisions, I would have said this judge's mind is made up about that forfeiture early in September.

Mr. MILLER. Well, I can understand how you could draw that conclusion, and I will tell you that your original statement was correct. Both myself and Alan Ehrlich had a lot of influence, an inordinate amount of influence with respect to some of the decisions that came out of those chambers, and I cannot recall one instance where a recommendation that I made in the form of an order was changed by the judge, and I believe that he was relying upon the research that I had done, the studied opinion that I had made, and I believe that had I submitted an order that was different, he would have signed it, and that is what I was alluding to with the other Senator, that I wished I had. I wished I had.

Senator LIEBERMAN. OK. I hear you. Now, let me come to the second part of this. You have testified, in response to some of the earlier questions, that you received a number of phone calls about this order, other attorneys—and you mentioned the *Accardo* case, which I believe the same attorney in the *Accardo* case may have called you, I believe it was the same case in which Santos Trafficante was involved. Was there a similar forfeiture question in that case, is that why the attorney would have called you?

Mr. MILLER. I think so. I think so.

Senator LIEBERMAN. OK. So, you had the calls from the attorneys. You even, I think, said at one point today that you had some inquiries from a reporter who was following the case, is that correct?

Mr. MILLER. It was as reporter—he wasn't inquiring of me, but he was in the office from time to time, looking at the file, has there been an order, from the Hollywood Sun Tattler, a local paper with some—a widely read paper in south Florida.

Senator LIEBERMAN. So, why did it take—and your explanation for why the order took so long to draft was your own tardiness——

Mr. MILLER. Yes.

Senator LIEBERMAN [continuing]. And yet the pressure on you was unusual on this one.

Mr. MILLER. It was.

Senator LIEBERMAN. Why did you take so long?

Mr. MILLER. It is one of those things, Senator, you just get something and you just say, look, I've had enough of this thing and you just can't get back to it.

Senator LIEBERMAN. It wasn't——

Mr. MILLER. It was a mental block, maybe it was—I don't know, but that, coupled with—it wasn't like I had this work sitting aside and I was out playing basketball or golfing every day——

Senator LIEBERMAN. I understand. I'm sure you were busy with court business. It just strikes me that this was an unusual, and even I understand it is more unusual just now looking back at it than it was at that time, but you had a number of calls which it sounds to me were not customary for a motion.

Mr. MILLER. It wasn't customary, but they weren't running the business of the court. The fact that they are inquiring wasn't going to affect (a) the work that I had done or (b) when I was going to do it.

Senator LIEBERMAN. Right.

Mr. MILLER. It was just something that was on my mind, it was constantly reminding me, Romano, Romano, Romano. I was sick of Romano.

Senator LIEBERMAN. OK. A final question on the forfeiture order: Respondent's Exhibit No. 22 is one of the FBI teletypes, and I will just read to you from it, if I may, regarding Washington field teletype—anyway, on October 7, 1988, Michael Owens, Assistant Strike Force Attorney, Miami, Florida, advised of the following conversation that he had with Judge Hastings' law clerk Miller in the judge's office on October 6, 1981: "1. Owens observed the top page of the order and observed that it involved *United States* v. *Frank and Thomas Romano.*"

As we try to piece together that day, does that reference by Owens coming in and seeing the top of the order help you gauge what time of the day that occurred, what time of the day you finished your work?

Mr. MILLER. This was on October 7th?

Senator LIEBERMAN. This was on October 6th, by this FBI teletype—I'm sorry, October 7th is a reference to the date on which Owens reported this to the FBI, but he recalls having come into the judge's office and talking to you and observing the top page of the order. Do you remember that at all?

Mr. MILLER. I remember Mike Owens and I remember him being around the chambers. I think he was the prosecuting attorney in the *Santorelli* case. Yes, he was there.

Senator LIEBERMAN. Do you have a recollection of him coming in on that day?

Mr. MILLER. I think he was around, I think he was in or about the chambers then.

Senator LIEBERMAN. Does it help you at all in recollecting what time of day that might have occurred?

Mr. MILLER. When he came in?

Senator LIEBERMAN. Yes.

Mr. MILLER. On the 6th?

Senator LIEBERMAN. Yes.

Mr. MILLER. It's hard to say. If Betty Williams started typing it in the morning, the front page would have been done first, so it could have really been any time during the day.

Senator LIEBERMAN. OK. Let me go back earlier. July, very briefly, before July 8th, when the sentencing occurred, Respondent's Exhibit No. 38 is a memo or some notes that you did, I believe, for Judge Hastings on the question of the supplemental motion for the new trial. Do you need to take a look at that?

Mr. MILLER. No.

Senator LIEBERMAN. You have a recollection of that? It is a document with your handwritten notes on it.

Mr. MILLER. Yes.

Senator LIEBERMAN. I go back to the period earlier, in May, May 11th, the day when the continuance was ordered, and I note from the record that there was a pending motion for a new trial at that time, but I don't see any indication that you did a similar memo for the judge leading up to May 11th.

Mr. MILLER. Yes.

Senator LIEBERMAN. Can you explain that?

Mr. MILLER. I can explain only to the extent that if I did one, I didn't maintain it. I don't recall if I did a workup for the judge for that hearing or not.

Senator LIEBERMAN. Would it have been customary for you to do a workup before a sentencing date?

Mr. MILLER. Not for a sentencing, no, it would have been not customary to prepare a workup for the sentencing. It would have been, though, customary to brief the judge somewhat on the pending motions. If there was a motion for a new trial, it would have been customary for me, it would have been my job to get him anything that was pending, to get the memorandum of law, to research it and to either do a written form memo to him or be prepared to brief him before he took the bench.

Senator LIEBERMAN. Do you have any recollection of doing that prior to May 11th? Again, May 11th was the day of the continuance.

Mr. MILLER. Other than our conversations that Friday afternoon while we were discussing the case in general, we probably would have discussed the pending motions then as well. The judge's indication at that time and his feelings were he was giving the Government all the relief that they were requesting, at least with respect to the forfeiture. It was set for sentencing on the 11th of May——

Senator LIEBERMAN. Correct.

Mr. MILLER. He had entered already on the 4th of May the order that the Government had submitted, and there was nothing in the intervening week that would have caused him to call into question the forfeiture order.

Senator LIEBERMAN. OK. But I'm focusing on not only the sentencing but particularly the motion for new trial that was pending on May 11th.

Mr. MILLER. That, too.

Senator LIEBERMAN. One of the things that surprises me as I look at that transcript of the hearing on May 11th, when the continuance was granted at the request of Attorney Sonnett, is that as the judge comes out, he proceeds right to the question of sentencing. He asks the attorneys to come forward, he says he's going to take the Romanos in tandem. He doesn't really deal at all with the pending motion for a new trial, which in the normal course would have come up first. Can you explain that?

Mr. MILLER. That was in May?

Senator LIEBERMAN. May 11th.

Mr. MILLER. Do you have a copy of the transcript in front of you? Maybe——

Senator LIEBERMAN. I do, yes.

Mr. MILLER. Because I read that, I read that transcript——

Senator LIEBERMAN. I know, you referred to it earlier.

Mr. MILLER. I read it and it didn't seem—there was nothing unusual about it, from my perspective.

Senator LIEBERMAN. Just in retrospect, why do you think there was no reference at the earlier time to the motion for—it's the top page of that—isn't that an unusual turn of events, to jump to the sentencing over the motion of a new trial?

Mr. MILLER. You would think that he would have dealt with the motion for a new trial first.

Senator LIEBERMAN. Yes.

Mr. MILLER. Yes. Of course, he never really got, other than saying hello, come on up, let's start, it is not unusual and I will tell you that on many occasions when I have had cases, criminal cases where I have filed motions for new trial in front of the judges, that motion may not have been resolved prior to sentencing, you go for sentencing and you say, "Judge, by the way, we have a motion for a new trial pending, you need to resolve it."

Senator LIEBERMAN. Yes, and——

Mr. MILLER. That is not at all unusual, and he never got to that point because Sonnett jumps right in and says, "Listen, I need some more time."

Senator LIEBERMAN. OK. Just so the record is clear, the only conversation that you recall—the only briefing, forget conversation—that you recall having done of Judge Hastings prior to May 11th was in the conversation you had in chambers on Friday, May 8th.

Mr. MILLER. That's the only specific recollection. That's not to say that we didn't talk about it some more Monday. I just don't recall that.

Senator LIEBERMAN. OK. And do you recall any conversation at that time about the motion for a new trial on Friday, May 8th?

Mr. MILLER. Yes, I'm sure we did discuss it. Some of the issues were raised about the videotaped deposition, I think—I'm sure we discussed it.

Senator LIEBERMAN. And to the best of your recollection, at that point the judge's inclination on the question of sentencing was what?

Mr. MILLER. I don't know. I mean we had talked about the possibility of probation. He said, listen, you know, I don't think these guys are as bad as they are all cracked up to be——

Senator LIEBERMAN. Right.

Mr. MILLER [continuing]. And he was considering probation. He didn't say he was giving them probation.

Senator LIEBERMAN. And what was your position on that question?

Mr. MILLER. I thought that, given the amount of resources that the Government had spent on the case, given the import that the Government placed on the case and all the other things that I was informed of at that time, I didn't think probation necessarily was the appropriate course and I let him know that.

Senator LIEBERMAN. So, you would have argued for a sentence?

Mr. MILLER. Yes.

Senator LIEBERMAN. And light?

Mr. MILLER. Something.

Senator LIEBERMAN. Something more than probation?

Mr. MILLER. Something more than probation, not 20 years, not ten years, but something, and I think maybe the 3 years was something. I did not know what he was going to do until he actually did it.

Senator LIEBERMAN. In light of the influence or attitude you had in the courtroom, do you think that your position had some effect on the ultimate sentence that the judge handed down?

Mr. **Miller**. I really don't think so. I don't think so.

Senator **Lieberman**. OK. No further questions.

Thank you, Mr. Chairman.

The **Chairman**. Any other questions by members of the committee?

[No response.]

The **Chairman**. Is there any reason this witness cannot be excused?

Senator **Rudman**. Mr. Chairman, could we just ask, while the witness is still here—not of the witness, but Mr. Bryant, and I would just like the witness here when I ask this question, because he might be able to give some testimony that could help answer it—you say you tried to find Mr. Williams, the former law clerk?

Mr. **Bryant**. That's correct. He is an attorney in New Orleans, I am informed, and he never answered our subpoenas.

Senator **Rudman**. But you know where he is?

Mr. **Bryant**. We have obtained an address through the bar association, but he has never answered back our attempts to reach him.

Senator **Rudman**. Then I guess you do know where he is.

Mr. **Bryant**. In fact, we sent an investigator down there to get that information.

Senator **Rudman**. I only say, as you know, this committee has the full right to call its own witnesses if it wishes, too. It is a unique kind of a hearing, and I am kind of interested in Mr. Williams. Maybe an interview will suffice, but I will discuss it with the chairman. We don't need the witness, but I just want to make sure I asked the question.

Mr. **Bryant**. Senator, prior to your speaking up, I was about to respond to the Chair by stating that the House would like to ask four additional questions, three of which relate directly to Charlester Williams and one of which relates to special delivery letters that I think may resolve your concern about him.

The **Chairman**. Considering the fact that that issue had not come up at the time you had completed your direct examination, you may ask the witness.

FURTHER REDIRECT EXAMINATION

Mr. **Bryant**. Mr. Miller, when did Charlester Williams leave his job as a clerk in the course of Judge Alcee Hastings?

Mr. **Miller**. Well, sometime prior to October and, again, my best recollection is either September or maybe late August. I'm not certain. He was not there at the time the order was entered.

Mr. **Bryant**. Was Charlester Williams still employed with Judge Hastings when the judge told you on October 5th that he wanted that order out that day? And I believe you've already testified that you did not discuss with anyone, other than your family, the fact that on October 5 and 6, 1981, the *Romano* forfeiture order was about to be issued, nor did you discuss its contents with anyone, is that correct?

Mr. **Miller**. Correct.

Mr. **Bryant**. Did you have any contact with Charlester Williams during that time regarding the *Romano* case?

Mr. **Miller**. No, I didn't.

Mr. Bryant. Now, with respect to the question of whether it was unusual to send orders out special delivery, do you recall testifying under oath on January 6, 1988, in a deposition taken by Special Counsel for the House of Representatives?

Mr. Miller. In Miami?

Mr. Bryant. In Miami.

Mr. Miller. Yes.

Mr. Bryant. Directing your attention to page 64, lines 8 through 22 of that deposition, would you please read that out loud and tell this committee if that refreshes your recollection on this point?

Mr. Miller. Do you want me to read it out loud or see if it refreshes my recollection?

Mr. Bryant. Would you please read it out loud and see if it refreshes your recollection on that point, lines 8 through 22.

Mr. Miller. "Question: Do you know if the October 6th order was mailed out special delivery?"

"Answer: I can't imagine why it would have been. If it was, I have no knowledge. As I sit here, I don't recall it being mailed special delivery. I think it was mailed just regular mail."

That doesn't refresh anything other than what I have already testified to.

Mr. Bryant. Did you take that to line 22?

Mr. Miller. Oh, no.

Mr. Anderson. What page are you on, please?

Mr. Bryant. Page 65.

Mr. Miller. "If it were mailed special delivery, would that be unusual, in terms of the practices in Judge Hastings' chambers?

"Answer: The practice as to sending out orders?"

"Question: Correct."

"Answer: It may be yes, it may very well be. I don't, unless there is some reason why an order had to get some place in a set period of time, special delivery being like overnight mail."

"Question: Right."

"Answer: I don't know that this was sent overnight mail."

Mr. Bryant. Thank you. We have no further questions.

The **Chairman.** Did counsel for Judge Hastings have a——

FURTHER RECROSS EXAMINATION

Mr. Anderson. Just a few, which I think would serve the same clarifying purpose.

Now, Jeff, on the special delivery point, do you have any recollection of the judge, from the time he signed the order, discussing with you the mailing arrangements?

Mr. Miller. No.

Mr. Anderson. In the ordinary course, after the judge has signed an order, where do they go from his desk?

Mr. Miller. Marilyn Carter.

Mr. Anderson. Am I correct in understanding that if you did the mail, it would simply be because you were there late and Marilyn handed you a stack of things and said would you drop them?

Mr. Miller. That's correct.

Mr. Anderson. So, it is not your recollection that you specifically mailed one envelope on that day?

Mr. MILLER. No, I didn't. My recollection is that I mailed a number of things and it just happened that I was leaving, there was mail to go out, the order was included, I asked if I could be helpful, as simple as that.

Mr. ANDERSON. Jeff, do you also recall that there was a suit pending in the court in August and September in which a group, the National Council of Churches, I believe, and some individual plaintiffs were seeking to enjoin the Immigration and Naturalization Service in connection with the Haitian boat people?

Mr. MILLER. That's right.

Mr. ANDERSON. Do you recall that the order in that case, an order enjoining the Government also went out on October 6th?

Mr. BRYANT. Mr. Chairman, we object to leading the witness in this fashion. He is asking——

Mr. ANDERSON. This is cross-examination, Mr. Chairman.

Mr. BRYANT. He's about to testify.

The CHAIRMAN. It is cross-examination and the witness will be allowed to respond to the question.

Mr. ANDERSON. Do you recall that?

Mr. MILLER. There were orders that went out on the Haitian refugee case.

Mr. ANDERSON. And that was a case of some urgency, because it was an injunction matter, was it not?

Mr. MILLER. That was a very urgent case. That took a lot of time in the office.

Mr. ANDERSON. Turning now to Charlester Williams, how did it come that Mr. Williams left the chambers?

Mr. MILLER. Under not the best circumstances.

Mr. ANDERSON. Who made the decision he should leave?

Mr. MILLER. I think it was probably joint, between himself and Judge Hastings.

Mr. ANDERSON. Was Judge Hastings happy with his work?

Mr. MILLER. I think Judge Hastings felt he was a bright attorney, as he was and probably still is.

Mr. ANDERSON. Was it your understanding that Judge Hastings had dismissed Mr. Williams?

Mr. MILLER. Yes, as a result of problems, internal problems that he had caused in the office between the staff.

Mr. ANDERSON. And at the time Mr. Williams left, he was aware substantially of the content of your draft order and your own discussions, was he not?

Mr. MILLER. He helped me prepare parts of it and did redrafts with me, yes.

Mr. ANDERSON. Was he aware that you had made arrangements to extend your term in Judge Hastings' chambers beyond September 30 at the time he left?

Mr. MILLER. I don't see how he could have, no.

Mr. ANDERSON. A couple of mechanical points. When you say you traveled with the judge to Key West and to Palm Beach and to Fort Lauderdale, were those travelings in connection with the court's business?

Mr. MILLER. Oh, all court's business. I mean——

Mr. **Anderson**. Where does the court for the Southern District of Florida, so that the Senators can understand, where does it physically hold court and sit?

Mr. **Miller**. Geographically, from the north in Fort Pierce, to the south in Key West, and all the way over to the west coast of Florida, Naples is the geographic jurisdiction of the court. We have the main courthouse in Miami, where most of the judges sit, we have a satellite courthouse at Fort Lauderdale, at that time there were two Federal judges sitting there, now there are three. We had another courthouse in West Palm Beach, where one Federal judge was sitting, and there was another Federal judge who was senior status there part of the time, and we had a little courthouse facility in Key West and a little courthouse facility up in Fort Pierce that would be used on an as-needed basis, but with no permanent chambers.

Mr. **Anderson**. So, when you testified earlier that you and the judge traveled, you were traveling as his law clerk to designated hearings?

Mr. **Miller**. If we had a case that——

Mr. **Anderson**. Did you ever go on vacation with him, I guess is what I am trying to——

Mr. **Miller**. No, we have never been on vacation. And when we traveled together, that didn't mean that we necessarily traveled together. I met him there. He would drive up and I would drive up, and it was business.

Mr. **Anderson**. I don't think I have any further questions, Mr. Chairman.

The **Chairman**. Is there any reason this witness cannot be excused?

[No response.]

The **Chairman**. We appreciate your testimony very much, Mr. Miller, and you are excused.

Will the House please call their next witness.

Mr. **Bryant**. At this time, the House calls Hemphill Pride, to be examined by Mr. Conyers.

The **Chairman**. Representative Conyers, we are pleased to see you up and around.

Mr. **Conyers**. Thank you very much. I am happy to be here.

I should advise the committee, Mr. Chairman, that we are scheduled to have recorded votes in the House at 5:00 o'clock.

The **Chairman**. We appreciate that information. We will go until the House is required to leave. If you would please proceed.

Mr. **Bryant**. Mr. Chairman, if you would please swear the witness.

The **Chairman**. Would you please stand? Please raise your right hand.

Do you, Hemphill Pride, swear and affirm that the evidence you shall give in the case now pending between the United States and Judge Alcee L. Hastings shall be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. **Pride**. I do.

The **Chairman**. Please be seated.

Mr. **Conyers**. Mr. Chairman, prior to beginning the direct examination of Mr. Pride, I would like to move into evidence Stipulations 2, 3, 4 and 5.

Stipulation 2. William Borders participated in Judge Hastings' Federal investiture ceremony.

Stipulation 3. In 1981, William Borders was an attorney practicing in Washington, DC.

Stipulation 4. As of January 1981, Judge Hastings and William Borders had known each other for 11 or 12 years.

Stipulation 5. As of January 1981, Hastings and William Borders had a long standing personal and professional relationship, stemming, in part, from their active roles in the National Bar Association, an association of black attorneys.

The **Chairman**. Is there any objection to those stipulations being admitted?

Mr. **Anderson**. No, Mr. Chairman.

The **Chairman**. They will be admitted.

[Stipulation Nos. 2, 3, 4 and 5 were received in evidence.]

Mr. **Conyers**. Good evening, witness. Please state your name for the record.

TESTIMONY OF HEMPHILL P. PRIDE II

DIRECT EXAMINATION

Mr. **Pride**. My name is Hemphill P. Pride, II.

Mr. **Conyers**. And where do you live, Mr. Pride.

Mr. **Pride**. I live in Columbia, South Carolina.

Mr. **Conyers**. And how long have you lived there?

Mr. **Pride**. I have lived there all of my life.

Mr. **Conyers**. Your occupation, please?

Mr. **Pride**. Presently, I'm a practicing attorney.

Mr. **Conyers**. Are you a member of the South Carolina bar?

Mr. **Pride**. I am.

Mr. **Conyers**. Do you know Judge Alcee Hastings?

Mr. **Pride**. I do.

Mr. **Conyers**. How long have you known him?

Mr. **Pride**. I have known Judge Hastings since 1959.

Mr. **Conyers**. Could you, for this committee, describe the nature of your relationship with Judge Hastings?

Mr. **Pride**. Judge Hastings and I are very good friends. We were room mates in law school. An example of our relationship, my first son, who is named after me, Judge Hastings is his godfather. Judge Hastings' first son, who was named after him, and his nickname is Jody, I am his godfather. We are very good friends.

Mr. **Conyers**. Thank you.

Now, approaching the year 1980, how frequently would you see Judge Hastings?

Mr. **Pride**. Approaching 1980, I would see him on occasion when he would visit me in Columbia, South Carolina or when I would go to Florida, Fort Lauderdale, where he lived. We were both members and active with the National Bar Association. When Judge Hastings became a State court judge, I participated in his robing ceremony and robed him. When Judge Hastings was married, I was at his wedding. When his son Jody was christened, I was at the church and participated.

Mr. **Conyers**. Did your families also have a close relationship?

Mr. **Pride**. Yes, my father and Judge Hastings—my father and mother knew Judge Hastings very well and knew Judge Hastings' mother very well and his uncle Cecil and a cousin Gordon Merritt, who was a physician.

Mr. **Conyers**. Did you also know William Borders?

Mr. **Pride**. Yes, I did.

Mr. **Conyers**. How long did you know him?

Mr. **Pride**. I met Mr. Borders in the early seventies, probably about 1970 or 1971.

Mr. **Conyers**. And what was the nature of your relationship with him?

Mr. **Pride**. Through the National Bar Association, I met him in New York, where there was a regional law committee meeting, I met him there.

Mr. **Conyers**. And was this relationship limited to the National Bar Association activities?

Mr. **Pride**. No. Mr. Borders and I became friends and, as a result of our affiliation with the National Bar Association, we also became social friends. I would see him at National Bar Association committee meetings. There were occasions when I would come to Washington, DC, to social functions that he would invite me to. There were occasions when I would invite him to Columbia, South Carolina, where I lived, to visit with me.

Mr. **Conyers**. Now, Mr. Pride, to your knowledge, was Judge Hastings and Mr. Borders also friends?

Mr. **Pride**. Yes, they were.

Mr. **Conyers**. Did you introduce them to each other?

Mr. **Pride**. No, they were friends before I was friends with either of them.

Mr. **Conyers**. Would it be accurate to say that they had a relationship independent of their relationship with you?

Mr. **Pride**. It would be accurate to say that they knew each other before they knew me and, if I recall correctly, they were students together in law school at Howard University.

Mr. **Conyers**. Now, Mr. Pride, in the late summer and early fall of 1981, what was your status with the bar of the State of South Carolina?

Mr. **Pride**. In 1981, my status was that I was suspended by the Supreme Court of the State of South Carolina. I had what was called an indefinite suspension.

Mr. **Conyers**. Can you explain why you were suspended?

Mr. **Pride**. I was suspended because on December 16, 1977, I was convicted in a Federal court and, as a result——

Mr. **Conyers**. Continue, please.

Mr. **Pride**. On the 28th of December, that same year, I was sentenced to three years in prison. The Supreme Court, the Chief Justice of the South Carolina Supreme Court issued an *ex parte* order that he suspended me from the practice of law. I employed—well, a lawyer, I really didn't employ him, a lawyer who was a friend of mine—his name is Dave Robinson—agreed to represent me because he felt that the action taken by the judge constituted a constitutional violation, it was really a suispondent [sic, *sui sponte*] kind of act that the judge took upon himself, without a hearing, in suspending my license.

Mr. CONYERS. Now, what were you convicted of?

Mr. PRIDE. I was convicted of misuse of rents from a project that was sponsored under the 236 HUD multi-housing development program.

Mr. CONYERS. Did you serve 1 year in prison?

Mr. PRIDE. I served a total of one year in prison and two months—one year in prison and two months in a half-way house, making a total of 14 months.

Mr. CONYERS. And when were you released?

Mr. PRIDE. I was released from prison in March of 1981.

Mr. CONYERS. Based on your conviction, you were suspended for an indefinite period from the South Carolina bar, is that correct?

Mr. PRIDE. Based on my conviction, I was first suspended in an *ex parte* order by the Chief Justice of the South Carolina Supreme Court.

Mr. CONYERS. And that suspension occurred on what date, sir?

Mr. PRIDE. That suspension occurred I think and believe between December 16th, when I was convicted, and December 28, 1977, when I was sentenced to three years in jail by the Federal judge. After that, I petitioned the Supreme Court for a hearing. At the hearing, the full court reversed the order issued by the Chief Justice of the South Carolina Supreme Court, and as a result of the reversal of that decision, the matter was referred to the bar association for a hearing. As a result of the bar association hearing the matter and based on the conviction, they voted to disbar me from the practice of law in the State of South Carolina.

From that decision, I appealed to the South Carolina Supreme Court, and the Supreme Court reheard the decision from that appeal and handed down in May of 1981 an indefinite suspension.

Mr. CONYERS. In the late summer and early fall of that year, 1981, were you eligible for reinstatement to the bar?

Mr. PRIDE. Was I eligible for reinstatement?

Mr. CONYERS. Yes.

Mr. PRIDE. No.

Mr. CONYERS. And at that time, were you aware of the rules of the South Carolina bar that governed your reinstatement?

Mr. PRIDE. Yes, I was.

Mr. CONYERS. And what were those rules?

Mr. PRIDE. It was Rule 37 of Volume 22 of the South Carolina Supreme Court Rules of Discipline, and under that rule a lawyer that received an indefinite suspension was not eligible to apply for readmission for a period of two years, until a period of two years had elapsed after the suspension, so I was not eligible to request or to apply for readmission until 1983.

Mr. CONYERS. Now, since you were suspended in May of 1981, when would you have been eligible to reapply for reinstatement?

Mr. PRIDE. In 1983.

Mr. CONYERS. At this time, I would like to offer into evidence House Exhibit 125, which is a copy of Section 37 of the Miscellaneous Rules of the South Carolina Supreme Court. This section governed the application for reinstatement to the South Carolina bar by a suspended attorney in 1981, and I believe counsel has a copy of this.

Mr. ANDERSON. I will take your word for it. No objection.

The CHAIRMAN. Is there objection?

Mr. ANDERSON. No objection.

The CHAIRMAN. It will be admitted.

[The document referred to was marked House Exhibit No. 125 and was received in evidence.]

Mr. CONYERS. Now, Mr. Pride, despite the fact that you were not eligible for reinstatement in the late summer of 1981, were you taking any steps toward reinstatement at that time?

Mr. PRIDE. Yes, I was taking steps toward reinstatement.

Mr. CONYERS. Please tell me about that.

Mr. PRIDE. When I was released from prison, there were lawyers and friends of mine that felt that I had an opportunity and would be given a second chance to practice law. They felt that I had a problem with some judges in the State of South Carolina, mainly chief justice of the South Carolina Supreme Court who had issued the ex parte order, they felt that I had a problem with the Federal judge that had sentenced me to three years in jail, and they felt that in order for me to gain readmission, that it was necessary that I stroke them, that I make amends, that I see them and have an understanding or discussions with them about comments that I had made publicly criticizing not only the chief justice of the South Carolina Supreme Court, but criticizing the Federal judge who sentenced me to three years in jail.

Mr. CONYERS. All right. Now, in connection with your fence-mending, did you consult with William Borders?

Mr. PRIDE. Yes. When you say "did I consult," I told him that I felt that I had an opportunity, and I discussed with him what I planned to do. I took him into my confidence and told him that I thought I had an opportunity to be reinstated and what my plight would be and what efforts I would have to make in order to be successful.

Mr. CONYERS. And did you consult with Judge Hastings?

Mr. PRIDE. Yes, I did.

Mr. CONYERS. Tell me about that.

Mr. PRIDE. Similar. I told him that I felt that I had an opportunity, I felt that there were people in Columbia, South Carolina that were supporting me. I told them that I felt that it would be necessary for me to make amends with certainly those two judges who were very influential people and would have something to say about my application for readmission.

Mr. CONYERS. So, what I hear you saying is that you were discussing with them a strategy to get on the road to reinstatement.

Mr. PRIDE. That is a correct description.

Mr. CONYERS. Was one of the judges that you wanted to meet with Chief Judge Lewis of the South Carolina Supreme Court?

Mr. PRIDE. Yes, it was.

Mr. CONYERS. Did you discuss with Judge Alcee Hastings how to approach the chief judge?

Mr. PRIDE. Yes, I did.

Mr. CONYERS. And did you in fact meet with Chief Judge Lewis?

Mr. PRIDE. I did.

Mr. CONYERS. And that meeting occurred on what date?

Mr. PRIDE. Well, the meeting was scheduled in August and Judge Lewis did not notify his secretary that he had agreed to meet with me, so when I appeared at the meeting there was no record and neither was he there. The Supreme Court is in Columbia, Columbia is the capital of South Carolina, but Judge Lewis did not live in Columbia, South Carolina, and the meeting was scheduled at the Supreme Court building, so when I got there in August for the meeting, he was not there, no one knew about the meeting and, of course, we did not meet.

Later on, Judge Lewis called me to tell me that he had, through oversight, forgotten about the meeting. At that time, we discussed on the phone a second meeting which would be mutually convenient and that meeting took place in September.

Mr. CONYERS. And what year was the meeting in September?

Mr. PRIDE. The meeting was in 1981, September.

Mr. CONYERS. And then the first meeting that was supposed to have occurred and didn't was in August 1981?

Mr. PRIDE. That is correct.

Mr. CONYERS. At any time during your meeting with Chief Judge Lewis, did you talk about reinstatement to the South Carolina bar?

Mr. PRIDE. No, I did not.

Mr. CONYERS. What was the purpose of the meeting?

Mr. PRIDE. The purpose of the meeting was really not to apologize. Judge Lewis was offended by statements that I had made public. I had been invited to the University of South Carolina Law School to speak, and I had publicly criticized him. For the first time, South Carolina had appointed a black judge to the bench, and his name was Ernest Finney, and Judge Finney had a great deal of criminal experience as a trial lawyer and as a circuit court judge, and Judge Lewis had Judge Finney on the civil side of the bench. In South Carolina, 72 percent of the population of the people in jail are black and I felt that Judge Lewis was using Judge Finney in an area perhaps where he shouldn't have. That might have been a bit officious on my part, but that was the speech that I made to the law students over at the University of South Carolina, that I didn't think that the judge was using Judge Finney in an area where he could best serve my Negroes in the State of South Carolina, plus the fact I was at that time general counsel for the NAACP in the Columbia area.

The executive director was a gentleman by the name of Isaac Williams. Judge Lewis had a court in which he only had one black person employed, and in that court it was a gentleman who poured water for the judges. He had no secretaries, he had no black clerks, and I asked for a meeting with Judge Lewis and I went with the Director of the NAACP.

Mr. CONYERS. Now, how long did this meeting take place between you and the chief judge?

Mr. PRIDE. The one, it didn't take very long because, though I felt that I was courteous, he gave me an opportunity to have my say, and when I told him that I felt that it was required that blacks be given jobs, certainly under the new civil rights bill and, you know, there was no effort being put forth on his part to hire blacks in any positions, he told me that he thought that the Supreme Court was exempt from any requirements and, on that basis, I told him that notwithstanding his legal opinion, that I thought that he had a moral obligation to manifest leadership, to show leadership and to do that, notwithstanding the fact that his legal position was that they were exempt from the bill. That did not set very kindly with him and it was a very short meeting.

Mr. CONYERS. Nevertheless, how did it fit into your strategy, the larger strategy that you had laid out?

Mr. PRIDE. Well, I thought what you asked me was what did I go to—in other words, I was explaining to you what my problem was with the Chief Justice of the Supreme Court.

When I wanted to be reinstated, I didn't want to have to eat my words, because what I said I meant and I didn't think I had done anything wrong. I thought I had offended him; I thought that he certainly did not take very kindly to my speech at the University of South Carolina, neither. It was obvious to me that he was not in agreement with my suggestion, as a representative of the NAACP that he should hire Negroes, so I knew that that had offended him and I knew as a result of it, I felt that that precipitated that *ex parte* order, that he had punished me for it, for being outspoken.

So, I wanted to go to him to make amends, but I didn't want to get on my knees, and neither did I want to take back what I said to him, so I had discussed with Judge Hastings and Mr. Borders, who I knew were good friends and confidants, people who I could speak with in confidence, on what kind of approach, how do you go to a man who had my license, how do I get them back and what do I say to him. Again, I didn't want to say, "Judge, I was wrong."

So, when I went to the meeting in September and we finally had it, Judge Lewis was a pretty big man because he didn't make me get on my knees, he started off by telling me, he said, "Just like you asked for this meeting, you came in and I gave it to you; when you spoke publicly, you could have asked to come see me then. I did not take very kindly to public criticism of the court, and I did not take very kindly to your making a speech like you did over at the law school, that the doors of my office have always been open and you could have come and talked to me as you did now, rather than criticizing me."

I thanked him for that opportunity and I left. I never discussed with him one time and ask him to let me be readmitted. In truth and fact, I wanted to be readmitted and that was my mission, but there was no discussion.

Mr. CONYERS. Now, how did you communicate this to Judge Hastings?

Mr. PRIDE. I told Judge Hastings that Judge Lewis was a man of considerable age, he was in his seventies and he was a southern white man, and that I didn't want to get on my knees and I——

Mr. CONYERS. But I mean by what forms of communication did you and Judge Hastings talk about this?

Mr. PRIDE. We talked about it over the phone, how to handle it, how to exercise diplomacy and get the job done, but still not have to bow my head too much, you know, to accomplish it.

Mr. CONYERS. Was there more than one conversation you had with Judge Hastings on this subject by phone?

Mr. PRIDE. There were several.

Mr. CONYERS. And in those conversations with Judge Hastings concerning this fence-mending effort that you were making in 1981, did you ever discuss any letters in support of reinstatement from Judge Hastings?

Mr. PRIDE. There was no discussion about anything for Judge Hastings to do, other than to consult with me. I value Judge Hastings' friendship, I respected his ability. I don't use the word "brilliant" lightly, but I regard Judge Hastings as a brilliant man and always did, and I valued his advice and I knew of his experience with white people. I knew that Judge Hastings' mother and father had worked for white people. His mother was a maid and his father was a butler, that he had close association. I knew that he had a real good education and experience and I told him, how can I go to this man, I don't want to tell him that I'm sorry that I said what I did to him, because that would not be the truth, I was not sorry, but by the same token, I want to exercise some diplomacy in order to accomplish a mission of putting at ease the bad privity that existed between the two of us.

Mr. CONYERS. But were there any discussions of letters of reinstatement coming from Judge Hastings to the South Carolina bar?

Mr. PRIDE. There were no discussions of letters coming from Judge Hastings.

Mr. CONYERS. With reference to your discussions with William Borders, did you ever discuss with him any letters in support of your reinstatement?

Mr. PRIDE. None.

Mr. CONYERS. Did you ever solicit letters of support from Judge Hastings?

Mr. PRIDE. Solicitation was not a prerequisite. Letters would not have helped me, and there was no discussion between the two of us about writing letters.

Mr. CONYERS. Did you ever solicit letters of support from William Borders?

Mr. PRIDE. The answer is no.

Mr. CONYERS. Did they ever offer such support?

Mr. PRIDE. There was no discussion, I never requested it, they never offered.

Mr. CONYERS. Would you have wanted letters of support at that time?

Mr. ANDERSON. Objection. This is the third time, this question. It has never been discussed, it seems to me killed the point, and his desires just are—we have gone through it three times.

The CHAIRMAN. The objection is overruled. The witness can respond to the question.

Mr. CONYERS. Would you have wanted letters of support at that time?

Mr. PRIDE. I would not have wanted any letters of that time and letters at that time from people outside of South Carolina would not have helped me. I had a local problem with local people, white people in South Carolina, and to have them write letters would have hurt me, not helped me.

Mr. CONYERS. Mr. Pride, was there any time prior to 1981 when you asked Judge Hastings to solicit funds on your behalf?

Mr. PRIDE. Yes.

Mr. Conyers. Can you explain that instance to the committee, please?

Mr. Pride. First of all, there were times that I did not ask Judge Hastings to solicit or to contribute, that he did on his own volition. Judge Hastings gave my mother money and he gave my wife money and he sent me money while I was coming back.

Mr. Conyers. And when you were imprisoned, is it not true you wrote a post-conviction release petition?

Mr. Pride. When I was in prison, I wanted to perfect a post-conviction action, because I had exhausted an appeal, all of my appeals. I had gone to the Fourth Circuit and they had ruled against me.

Mr. Conyers. Now——

Mr. Pride. And I had gone to the Supreme Court and they turned down certiorari, so the only other avenue that I had was a post-conviction——

Mr. Conyers. Did you write letters asking for help, financial assistance, so that you could get this post conviction petition put together and have other attorneys work on it?

Mr. Pride. Yes, I structured what I called a post-conviction petition and the basis was selective prosecution, that I have been selectively prosecuted and that it was a denial of equal protection of the law under the 14th Amendment, and once I had worked on it, I wrote Judge Hastings and told him that I wanted to file a post-conviction petition but that I needed a lawyer and that I had been in contact with Julius Chambers, who is now General Counsel for the NAACP, took Jack Greenberg's position, and that Julius Chambers had agreed that if I did the work, that he would look at the petition and add or subtract to it and that he would handle it for me, file it and represent me in it, so I structured, after research, such a petition. I wrote Judge Hastings a letter and told him that I thought that this was my last out and that I needed to raise some money and that I wanted him to get in contact with classmates, friends, members of the national bar and solicit money to help me hire Julius Chambers in order to represent me in the matter and I also asked him to have his law clerk and for him to personally look at the application and tell me whether or not it possessed merit, and that if he could add or subtract from it, to make it more meritorious, then I wanted him to do it.

Mr. Conyers. Thank you.

Now, this is House Exhibit 126 that I show you, which is a copy of a letter dated July 18, 1980, to "Blood," from "Hempie," and I want you to examine it and to tell us if you wrote this letter.

Mr. Pride. I've seen the letter before and, yes, it is.

Senator Pryor. Congressman Conyers, excuse me, would you mind repeating to whom the letter is addressed, from—what was the name, the addressee?

Mr. Conyers. We are going to explain the vernacular that is used here, Senator Pryor.

Senator Pryor. Thank you.

Mr. Anderson. What's the number, Mr. Conyers?

Mr. Conyers. I believe that is 126.

Mr. Anderson. Thank you.

Mr. Conyers. Now, could you explain the question raised by Senator Pryor that the letter was to Blood from Hempie?

Mr. Pride. My name is Hemphill P. Pride, II. There are many people who call me Hempie, H-e-m-p-i-e, and I have friends that call me Hemp, H-e-m-p. When Al and I were roommates in law school, I had two brothers—both died when I was about two years old, so I had no brothers or sisters—Al was an only child, Al was probably the closest person to a brother to me that I have ever known in my life and, as a result of it, he called me Blood and I called him Blood, which was a nickname, and I wrote him "Blood," and when I said "Blood," I was talking about Judge Hastings.

Mr. Conyers. Right. Is this a copy of the letter that you sent from prison to Judge Hastings, asking for help in soliciting funds for your post-conviction petition?

Mr. Pride. Yes, it is.

Mr. Conyers. Mr. Chairman, I move Exhibit 126 into evidence.

The Chairman. Is there objection?

Mr. Anderson. No objection.

The Chairman. It will be admitted.

[The document referred to was marked as House Exhibit No. 126 and was received in evidence.]

Mr. Conyers. Let me read the last five lines above your signature, starting with "I am encouraged."

"I am encouraged, Blood, and you have the strength to keep fighting, but I need your help. All this is costing money. Don't let me down, raise some money to help keep me going and pay Julius."

Did Judge Hastings write back in response to your letter?

Mr. Pride. No, he did not.

Mr. Conyers. Did Judge Hastings solicit money on your behalf, as was requested?

Mr. Pride. No, he did not.

Mr. Conyers. Do you know why he did not provide this help?

Mr. Pride. I called Judge Hastings several times and finally left word with his mother that at a certain time I would call him and to ask him to be there so we could talk. When I did talk to him, he told me that he felt, because of his position of being a Federal judge, that that would be an impropriety and that he just couldn't do it. He said I'm in no position, as a result of being a Federal judge, to raise money for you for legal fees, and also he told me that the document that I had drafted in his opinion did not possess merit, that he had had several occasions where other lawyers had raised that defense before him and that, in effect, it just did not have merit and that I should forget about it—he didn't say I should forget about it, but that was his answer.

Mr. Conyers. Now, after your conviction in Federal court, did you receive any support from William Borders?

Mr. Pride. Yes, I called——

Mr. Conyers. What is that support?

Mr. Pride. Bill did a number of things for me. He gave my mother some money; he gave my wife at that time some money. When I got out of prison, the first thing I wanted to do was terminate my parole, and I talked with a lawyer who represents me today by the name of Tommy Simpson, and he told me yes, that

that was an avenue in which to do it and helped me in terms of telling me where I could find the appropriate books to file such a petition.

I called Bill Borders on the phone and told him that I was trying to terminate and get off parole. Parole was a problem for me. I had to report once a month, I had to do things that people have to do that are on parole, and I wanted to be terminated. I had no prior criminal record, and I felt that I met the category of a person who should be eligible to be relieved of that responsibility, so Bill gave me the name of a gentleman who was on the Parole Board or had served on the Parole Board, who was in St. Louis, Missouri, and I called him on the phone and talked with him and got some ideas about what the Parole Board would be looking for in such an application and, based on my research and based on that conversation, I structured a petition to the Parole Board in Atlanta which was the regional office for where I was located, requested an early termination.

Mr. CONYERS. What was the result of that?

Mr. PRIDE. It was denied.

Mr. CONYERS. You mentioned Tommy Simpson. Who is he?

Mr. PRIDE. Tommy Simpson is a lawyer in Columbia, South Carolina and he represents me today.

Mr. CONYERS. Is he here in this hearing?

Mr. PRIDE. Yes, he is.

Mr. CONYERS. And what's the nature of your relationship?

Mr. PRIDE. Attorney-client.

Mr. CONYERS. You've known him for how many years?

Mr. PRIDE. I've known Tommy since I was a lawyer. I've known Tommy Simpson for at least 20 years.

Mr. CONYERS. In what capacities have you been involved in legal matters?

Mr. PRIDE. Tommy Simpson has been a United States Attorney for thirty years. He served as a magistrate in South Carolina for about two years. He is a very influential and a very powerful lawyer. He is a very good friend of mine, and he and I have tried cases when he was a United States Attorney, I have tried many cases against him. As a matter of fact, when I——

Mr. ANDERSON. Objection, Mr. Chairman, on relevance. I am really struggling to stay seated, but this one is pushing my understanding.

The CHAIRMAN. The objection is overruled. The witness can complete his answer.

Mr. PRIDE. When I was in trouble, I never went to Tommy Simpson, when I got indicted by the United States Attorney, to ask him to do anything for me, because I thought it was inappropriate. When I was released from prison, I was downtown one day and I saw him and I was really embarrassed as a result of being confined and did not want to see him or speak to him. He made it a point to come over and speak and to say that if he could be of any assistance, he would.

Mr. CONYERS. Now, after your release from prison in March 1981, where were you employed?

Mr. PRIDE. I had two jobs. I worked for the Columbia Urban League and I worked at a place called Dennis & Associates.

Mr. **Conyers**. In what capacities did you work at each of those places of employment?

Mr. **Pride**. I worked as a consultant with the Urban League and as a consultant with Dennis & Associates.

Mr. **Conyers**. Now, Mr. Pride, let's direct your attention to October 9, 1981. Were you in Washington——

The **Chairman**. Representative Conyers, let me just interrupt. We are about two or three minutes from the time we had scheduled to recess, and I notice you are starting another line of questioning. This might be an appropriate time to go ahead and recess.

Let me advise, before we do recess, let me advise counsel that the committee has one other, at least one, for tomorrow we have an issue we would like to try to deliberate on in closed session sometime probably after the morning session or late in the morning session, and that is the question of whether Mr. Borders should be called as a witness to the case.

I would appreciate it, I think the committee would appreciate it if counsel would come prepared tomorrow to state any point of view or position they have as to the appropriateness of calling Mr. Borders, whether they would wish to call him or whether they believe the committee should call him, and the reasons for that.

What we might do is schedule to reconvene at 9:00 and then schedule at 11:30 to hear from counsel on that issue, and then the committee can deliberate until 12:00 on the issue.

Mr. **Pride**. Mr. Conyers, would you advise him that I don't plan to be here tomorrow?

The **Chairman**. Are there questions about that procedure, Mr. Conyers?

Mr. **Conyers**. Mr. Chairman, we have difficulty in terms of our present witness and his counsel. They were put over, of course, from last week and have been here all day and they both have scheduled matters in court tomorrow, as I understand it, of great urgency. We were hoping that somehow we could reconsider our program today, and I realize that these matters have been totally out of your hands as well as ours, but we do have a problem of attendance of the witness on tomorrow. Is that correct?

Mr. **Pride**. That is correct. I come to you at great inconvenience.

The **Chairman**. Representative Conyers, I cannot keep the committee beyond the time that we originally scheduled, because everybody has made plans on the basis of our schedule. If the House managers wish to continue with this witness at a later time during their case in chief, they are certainly free to do that. We do not require that you continue with this direct examination at 9:00 tomorrow. You could call another witness and bring this witness back later in the week, if that is your determination.

Mr. **Conyers**. Well, we will consider it. I know that both Mr. Pride and Mr. Simpson have told us many times about the urgency that they could finish and, of course, to the best of our guesstimates we thought that we would be able to conclude their testimony today as well. So, we will take that into consideration, and the House managers will be prepared to respond to the same question that we wrestled with in the subcommittee in the House as to whether or not to bring forward Mr. Borders.

The **Chairman**. Mr. Anderson, did you have a——

Mr. ANDERSON. One. Mr. Chairman, we would, at the earliest possible moment, like to know whether the witness is continuing or whether he would be recalled. As a procedural matter, since his testimony has begun, we would ask the Chair to instruct the witness—of course, he may talk with his own attorney, but not to discuss his testimony with counsel for either side or the managers until it is completed, be it completed tomorrow or be it completed in the future.

Finally, Mr. Chairman, I had been asked by Representative Bryant if I would proffer the basis of my good-faith. I have 15 copies of a report written by Professor Scott Baldwin, a linguist, the one linguist with whom one of my then associate counsel consulted. Since I was challenged to produce it, I would like to produce 15 copies now.

Mr. BRYANT. Mr. Chairman, he was not challenged to produce any such thing. I simply asked for the name and the address and the phone number of the person that he called, and we will object to the offering of any evidence or any paperwork with regard to the person called until we have an opportunity first to talk to that person. It would be blatant hearsay.

Mr. ANDERSON. You called upon me to supply those to the committee also. I was challenged a couple of times in assertions that I have made. I have been challenged by both Mr. Bryant and by the Chair.

The CHAIRMAN. Mr. Anderson, we will take that at the time that you begin your case in chief, if you wish to offer it at that time. If you wish to call a witness, you are permitted to do that. We will not permit you to just offer an exhibit out of order and out of the presentation of your case.

Mr. ANDERSON. I was not disclosing necessarily until I made up my mind and I was admonished this morning to produce it.

The CHAIRMAN. Counsel——

Mr. ANDERSON. I will produce it in my case, Mr. Chairman, if I——

The CHAIRMAN. Counsel, I have ruled on this. If you will please be seated, we have disposed of your objection and your proposal. You can offer that as part of your case in chief.

Mr. ANDERSON. May I then retrieve the copy I have given to Mr. Bryant?

The CHAIRMAN. You may do that. If you wish to offer that in your case, you can do so.

Mr. Conyers, if you would be prepared to proceed or the House managers at 9:00 o'clock with another witness, if Mr. Pride is not available, then at 11:30 we will hear from both yourself and counsel for respondent on the question of the calling of Mr. Borders as a witness.

Mr. CONYERS. Thank you, Mr. Chairman, and we will advise counsel as soon as we have made a determination as to how soon our witness can return.

Mr. ANDERSON. I take that, then, that the decision is that he will not be here tomorrow?

Mr. CONYERS. No, we haven't made any decision. We will advise you of our decision as soon as it is made.

Mr. ANDERSON. I have a difficult set of cross-examinations to prepare for, one is this and one is if we go in another direction.

The CHAIRMAN. We would request and direct the House counsel to please advise both committee staff and Mr. Anderson of your decision on who you will call tomorrow morning as witnesses, as quickly as you make that decision, and we would suggest that if Mr. Pride is not going to be allowed to continue, that he not visit with counsel for the House or counsel for respondent during the time that his direct testimony is interrupted.

Is there any other procedural matter?

Mr. BRYANT. Mr. Chairman, I would simply like to offer the committee which have been prepared according to previous instructions by Mr. Shuy. Copies have been given to other counsel. These are transcripts of the tapes.

The CHAIRMAN. Are there objections to those transcripts?

Mr. ANDERSON. Subject to our examining them, no.

The CHAIRMAN. They will be admitted, subject to objection being raised at a later date.

The committee will recess at this time until 9:00 tomorrow morning.

[Whereupon, at 5:34 p.m., the committee was adjourned, to reconvene on Tuesday, July 18, 1989, at 9:00 a.m.]

IMPEACHMENT OF JUDGE ALCEE L. HASTINGS

TUESDAY, JULY 18, 1989

U.S. Senate,
Impeachment Trial Committee,
Washington, DC.

The committee met, pursuant to notice, at 9:08 a.m., in Room SH–216, Hart Senate Office Building, Hon. Jeff Bingaman, chairman of the committee, presiding.

Present: Senators Bingaman, Specter, Leahy, Durenberger, Pryor, Rudman, Bryan, Bond, Kerrey, Gorton, Lieberman, and Burns.

House managers present: Representatives Bryant, Conyers, Synar, Gekas, and Fish.

Counsel present: Terence J. Anderson, counsel for Judge Hastings; Patricia Graham Williams, counsel for Judge Hastings; Robert S. Catz, counsel for Judge Hastings; Lewis Myers, Jr., counsel for Judge Hastings; Alan I. Baron, special counsel, House Impeachment Committee; Janice E. Cooper, Patricia Wynn, and Lori E. Fields, assistant special counsel, House Impeachment Committee; Michael Davidson, Senate Legal Counsel; Elaine Stone, counsel, Senate Impeachment Trial Committee; Mark Klugheit, counsel, Senate Impeachment Trial Committee; and Bruce McBarnette, counsel, Senate Impeachment Trial Committee.

Staff Present: Anthony Harvey, administrator, Senate Impeachment Trial Committee; P. Casey McGannon, staff assistant, Senate Impeachment Trial Committee; and Isabel McVeigh, staff assistant, Senate Impeachment Trial Committee.

The Chairman. The committee will reconvene.

Mr. Anderson, I notice that Judge Hastings is not present. He had stated once or twice earlier in the proceeding that at occasions when he was not here we should proceed, as long as you were present. Is that your understanding?

Mr. Anderson. That is correct, sir.

The Chairman. The House can continue with the testimony of Mr. Pride or call another witness, as you prefer.

Mr. Bryant. Mr. Chairman, we would like to continue with the testimony of Mr. Pride. Before beginning, I would like to announce to the committee that based on our analysis of time, we are presently two hours ahead of schedule on the presentation of the House's case. We submit that for your planning purposes.

The Chairman. Let me just, for everyone's planning purposes, indicate what our situation is for the rest of today. As I think we indicated last evening, we would go until 11:30, at which time we would interrupt the testimony of witnesses and hear from both counsel on the issue of whether Mr. Borders should be called as a witness.

Then we would deliberate in closed session, the committee would, until 12:00, and our conferences go until 2:15, and a vote is scheduled at 2:35. So, realistically, it will be 2:45 before we could hope to reconvene this afternoon.

With that understanding, Representative Conyers, if you would like to continue.

Mr. CONYERS. Good morning, Mr. Chairman. The House managers would like to re-call for direct examination Mr. Hemphill Pride, who is still under oath.

Good morning, Mr. Pride. May I direct your attention to the day October 9, 1981? Were you in Washington, DC, on that date?

TESTIMONY OF HEMPHILL P. PRIDE II (continued)

DIRECT EXAMINATION (continued)

Mr. PRIDE. I was.

Mr. CONYERS. And why were you there?

Mr. PRIDE. I was here because the president of the National Bar Association, Mr. William Borders, was being honored. It was a day of festivities, including a boat ride, and I had come from Columbia, South Carolina, to Washington, DC, in order to attend that affair.

Mr. CONYERS. Did your family accompany you?

Mr. PRIDE. Yes. At that time I was married, so my wife was with me and my son, Elliott, who was two years old.

Mr. CONYERS. Where did you stay?

The CHAIRMAN. Mr. Pride, would you just pull that microphone a little closer to you, please? Thank you.

Mr. PRIDE. I stayed at the L'Enfant Plaza Hotel.

Mr. CONYERS. And on October 9, 1981, did you see William Borders and Judge Hastings?

Mr. PRIDE. I did.

Mr. CONYERS. When was the first time you saw them?

Mr. PRIDE. In the morning. I arrived somewhere between, the best I can recall, 9:00 and 10:00 o'clock, and I saw them about thirty minutes or so after I checked into the hotel, which would have been about 10:30, maybe 10:00 or 10:30.

Mr. CONYERS. Where in the hotel did you see them?

Mr. PRIDE. I saw them in my room.

Mr. CONYERS. They came to your room at the L'Enfant?

Mr. PRIDE. That is correct.

Mr. CONYERS. And did you see Judge Hastings, then, for the first time in a considerable period of time?

Mr. PRIDE. That was the first time that I had seen Judge Hastings since I had been released from Maxwell, which is a Federal prison in Alabama.

Mr. CONYERS. And was that the first time you saw William Borders in a long time?

Mr. PRIDE. Well, when you say in a long time, I would like to answer that by saying that I had seen Mr. Borders since my release from Maxwell, and my release from Maxwell was in March of 1981.

Mr. **CONYERS**. And what happened then? These two gentlemen came to your door at the L'Enfant. What was the discussion?

Mr. **PRIDE**. There was gregarity that was a renewal of three people who were very close, and I was delighted to see them, delighted to be there. I was just coming out of the shower, and there was conversation between the three of us and my family.

Mr. **CONYERS**. What happened then?

Mr. **PRIDE**. I really wanted to know, you know, what was the agenda, what were they going to do. I wanted to be with them and wanted to find out what was going down and what we were going to do.

Mr. **CONYERS**. As a matter of fact, did their appearance at the L'Enfant or their staying there have any influence on you staying there?

Mr. **PRIDE**. That is the reason that I stayed there, because I knew that Judge Hastings was staying there. But I did not know at the time that I made my reservations that Mr. Borders was staying there. And I am not certain today whether or not he stayed there or not. But my reason for staying at the L'Enfant Plaza Hotel was to be in Judge Hastings' company.

Mr. **CONYERS**. And you said you were going shopping with your family. Did you, in fact, go shopping?

Mr. **PRIDE**. Well, I did not say that, but that did occur. When they were in the room, the conversation took place, what is going on, what is the itinerary for today. I wanted to go with them. My wife wanted me to go shopping, and her wishes prevailed.

Mr. **CONYERS**. And what happened after you came back from shopping?

Mr. **PRIDE**. Immediately upon my return, I commenced to call to see if Judge Hastings was in his room, and I was not able to reach him.

Mr. **CONYERS**. What happened then?

Mr. **PRIDE**. Thereafter, I called a number of times, and finally he called my room and told me that he was in his room. And at that time, I excused myself and went to his room.

Mr. **CONYERS**. There was a conversation? What was the nature of the conversation?

Mr. **PRIDE**. Well, when I got to his room, Judge Hastings was completing an order of food. As I recall, it was a sandwich and some soup. And I was hungry, and I told him to order me some. As a matter of fact, he ordered another order for himself, and he also placed an order for me. When they came, they brought the correct order for me but did not bring what he had ordered. So the waiter had to go back downstairs and correct the order.

Mr. **CONYERS**. And you finally got your orders and you were served and you ate?

Mr. **PRIDE**. Yes. We ate in the room.

Mr. **CONYERS**. Then what happened?

Mr. **PRIDE**. After that, we went downstairs to a bar, the Apple—I have forgotten the name of the bar, but whatever the name of the bar is, that is the same name that the FBI gave for the code of the investigation of this matter, the Apple Eye or something like that. But we went there to have drinks.

When we went in, I thought—it was my impression that they were closed because there was such little activity going on. But when we inquired, the bartender told us to come in and that the bar was open. Then later I recall a lady came in, and she wanted to know whether or not they were serving, and they told her yes, that they were serving and seated her. But Judge Hastings and I sat at the bar, and we drank.

Mr. CONYERS. Can you remember what time of day it was that you were at the so-called Apple Eye Lounge in L'Enfant Plaza?

Mr. PRIDE. It was certainly after 2:00 o'clock and before 5:00.

Mr. CONYERS. And when you saw Judge Hastings on this day, you have testified that this was the first time you had seen him since your release from Maxwell?

Mr. PRIDE. That is correct. The judge came to visit me when I was a prisoner in Maxwell. He came down to see me and to see about me. And since after my release, that was the first time that I had seen him.

Mr. CONYERS. Now, while you were in the L'Enfant Plaza lounge with Judge Hastings, was there any discussion of Judge Hastings' help in obtaining your reinstatement to the South Carolina Bar?

Mr. PRIDE. No. Well, there was a review of the progress that I had made. But to answer your question, no.

Mr. CONYERS. Was there any discussion of obtaining financial help for you?

Mr. PRIDE. No.

Mr. CONYERS. What was there discussion about?

Mr. PRIDE. There was discussion about the boat ride. There was discussion about how his mother was doing. There was discussion about the children: Hempie, who is his godson, and about his son, Jodie, and what progress he was making in life. There was general conversation, nothing relating to my progress as it related to reinstatement and nothing of any privacy relating to his matriculation as a Federal judge in Florida.

Mr. CONYERS. Well, Mr. Pride, what was the state of your progress?

Mr. PRIDE. I had made good progress. I was on track.

Mr. CONYERS. What do you mean by that?

Mr. PRIDE. Well, I mean that I felt like I had my ducks lined up and that I was certainly going to get an opportunity to be reinstated. And I knew I had to prepare to take the South Carolina Bar. That was another new requirement that the court had added for a suspended lawyer. Prior to my having to take the bar, that was not a requirement. So I had to study and get ready to enter a bar review course and take the bar again. I had not taken the bar since 1963, and that is what I was preparing to do.

Mr. CONYERS. So, so far, this trip that you made from South Carolina to Washington to honor Mr. Borders at a National Bar Association meeting, a boat ride, to meet friends, was a pretty euphoric experience? You were having a good time?

Mr. PRIDE. I was elated.

Mr. CONYERS. And now what happened when you concluded with your drink or drinks at the Apple Eye Lounge?

Mr. **Pride**. When we left the Apple Eye Lounge, we both got on the elevator. Judge Hastings went to his room, and I went to my room.

Mr. **Conyers**. And what happened in your room?

Mr. **Pride**. As it relates to this incident, as soon as I got in, I got a telephone call. The best I can recall, my wife answered the phone and told me that the call was for me.

Mr. **Conyers**. And who was calling you?

Mr. **Pride**. A lawyer from Washington, DC, by the name of John Shorter.

Mr. **Conyers**. And will you tell us what he told you and what you told him?

Mr. **Pride**. John Shorter first of all greeted me and I greeted him, and there was a certain urgency about his call. He wanted to know if I knew where Judge Hastings was, and I told him yes, that he was either in his room or on the way to his room because I had just left him. So he asked me to get in contact with Judge Hastings and tell Judge Hastings that there were two FBI agents that wanted to interview him because William Borders had been arrested. And I commenced to question John. First of all, I could not believe what I was hearing, and I was shaken by the message. So I kept making John repeat and explain, endeavoring into as much information in the background as I possibly could. But it was obvious from John's—what John said to me was, "I'm on my way to Virginia because that's where Mr. Borders"—he didn't say "Mr. Borders." He said, "That's where Bill is confined, and I'm on my way over there to appear before the magistrate to see if I cannot arrange bond for his release."

Mr. **Conyers**. Did you know John Shorter?

Mr. **Pride**. Yes, I knew John Shorter.

Mr. **Conyers**. Did John Shorter tell you why Mr. Borders had been arrested?

Mr. **Pride**. Yes. He told me that the FBI had—that Mr. Borders had been charged with bribery, and that the purported or alleged bribe had taken place in Judge Hastings' courtroom.

Mr. **Conyers**. What was your reaction to this?

Mr. **Pride**. I could not believe this. I said, "John, tell me again." You know, I just did not—I mean, I could not comprehend that. I mean, that was bizarre. That was unbelievable. I could not believe I was hearing John Shorter tell me the things that he was saying over the phone.'

Mr. **Conyers**. Did Attorney Shorter give you any names of any FBI agents for Judge Hastings to contact?

Mr. **Pride**. He gave me two names and a telephone number.

Mr. **Conyers**. What were those names?

Mr. **Pride**. The best I can recall, one of their names was Bird and the other one's name was Murphy.

Mr. **Conyers**. And what did you do when you finished this telephone conversation?

Mr. **Pride**. I called Judge Hastings' room, and when he answered, I told him that it was urgent that he come down to my room right away.

Mr. **Conyers**. And did that happen?

Mr. **Pride**. Well, he did not come to my room. After I told him that, I started—I left the room to go meet him. My son was two, and he wanted to go along with me, so I took him. By the time that Judge Hastings stepped off of the elevator, I was either in front of the elevator or approaching the elevator as he exited it.

Mr. **Conyers**. Well, what was the first thing you said to him?

Mr. **Pride**. I told him, "Al," I said, "John Shorter just called me." And, I relayed to him what John Shorter had said to me.

Mr. **Conyers**. Now, Mr. Pride, what was Judge Hastings' reaction to the information you imparted to him?

Mr. **Pride**. He was stunned. He was as I was when John told me. He commenced to tell me again, "Now, what did John say? Where is Bill?" And I said, "Al, not only that, John said the bribe, you know, took place in your courtroom." And I said, "Has Bill ever been in your courtroom? What cases has Bill"—I mean, I wanted to know what in the world was going on. And Al said, "No, Bill's never tried a case before me in my courtroom." So I said, "Well, you know, you tell me what you know about it." He said, "I don't know anything." But I could tell—I knew Al and had lived with him for a year-and-a-half as his roommate on a day-to-day basis. And after leaving law school in 1962, our relationship continued. And I knew him well enough to read him. I knew expressions and I knew that he was shocked. I knew he was upset. I knew that—I saw an expression of disbelief, of: What? I can't believe this. What are you telling me?

Mr. **Conyers**. How many minutes did that take, this initial imparting of the information and Judge Hastings' reaction?

Mr. **Pride**. Honestly, the impact of the situation prohibits me from estimating time. But, I mean, it certainly did not take very—it did not—if I had to guess, which I wish you would not ask me to do, I would approximate maybe 5 minutes, three minutes. I mean, John did not give me that much to give Al, and it did not take that much time to tell him. And besides that, I was asking questions that Al had no answers to.

Mr. **Conyers**. What happened next?

Mr. **Pride**. What happened next? Next, Al—I do not know whether or not he suggested it or I suggested it, but next we went down to my room. The purpose was that my son, Elliott, two years old, was difficult to manage and talk to Al at the same time. So I went down to my room to take him back to my wife and leave him, and our plans, or my plan, certainly, was to go up to Al's room with him. And that is exactly what we did.

Mr. **Conyers**. Now, did you take the elevator to his room?

Mr. **Pride**. Yes, we did.

Mr. **Conyers**. And on the way to the room, was there a discussion further about this matter?

Mr. **Pride**. No. There were people on the elevator, so there was no discussion.

Mr. **Conyers**. When you got to the room, did you give Judge Hastings any counsel, advice?

Mr. **Pride**. When I got to the room, Al wanted me to—first of all, it was like tell him again what John had said. And I told him again what John had said, and he said to me, "What's John Shorter's telephone number? Do you know how to get in contact with John Shorter?" I said, "Al," I said, "there's no need of your calling John Shorter. I got the distinct impression that John was not in his office, plus John told me he was on the way to Virginia to try and seek Borders' release before a magistrate. So there's no need of your calling John Shorter's office."

Excuse me. I have to back up. One of the things that John Shorter told me in the conversation was to have Judge Hastings contact a lawyer by the name of Ken Mundy, who was a practicing attorney here in the city of Washington. And John Shorter told me that Ken Mundy would accompany Judge Hastings to the interview with the FBI. And Al then asked about Mundy and how to get in contact with him. I told him that I did not think that it would be in his best interest to be taking advice from John Shorter because John Shorter was representing Bill Borders, and that though I recognized Ken Mundy to be a very fine and reputable lawyer, I certainly would not call him.

Mr. CONYERS. Did you know Mr. Mundy?

Mr. PRIDE. I knew of Mr. Mundy, and I knew his reputation, and I had met him. But, no, I did not.

Mr. CONYERS. After this discussion, what steps did Judge Hastings take in your presence?

Mr. PRIDE. Well, I mean, he was shaken. It was obvious that he was uncertain of what to do. I then gave him the number and the names of the two FBI agents, and as I gave them to him, I told him, I said, "Al," I said, "I would not call these agents." I said, "Under these conditions and if you don't know anything about this, there is no way in the world that I would let the FBI interview me in Washington, DC." I said, "I would take a home-court advantage. I would go home and get in contact with them, get in contact with your lawyer."

I knew that Al had a lawyer in Florida by the name of Andrew Mavrides, and the reason why I knew that is because I had met Mr. Mavrides. And when Al became a Federal judge, I participated in the robing ceremony and placed the robe on him to become a Federal judge. And Al had also told me that he and Mavrides were writing a book together. I knew that they had tried cases together. I knew that there was a common thread of friendship, and I thought he would be the appropriate person for Al to call, plus I did not think the Washington—I told him to go home and to, you know, get in contact with Mavrides and let Mavrides sort of broker the relationship between he and the FBI, certainly find out more than John Shorter had told me.

Mr. CONYERS. Surely. What did Judge Hastings do?

Mr. PRIDE. He took my advice. He commenced to pack his clothes, and we discussed. And when he finished, I had driven from Columbia, South Carolina, to Washington, DC, and my car was downstairs in the garage. And I had told Al that I would take him to the airport. I expected him to let me take him to the airport. And when we got to the lobby, I said, "Just hold on a few minutes and I'll go get my car," because I had the stub and all in my pocket. And he said, "No." He said, "I'll catch a cab." I said, "What do you mean you'll catch a cab? There's no need for you to catch a cab. I've got my car right downstairs. It won't take but a minute. I'll take you to the airport."

He said, "No." He said, "Listen, you're on probation. You go back with your wife. You don't need to be involved in this. I'll get to the airport." So it was like a miniature debate because I was sort of insisting that there is no reason for you to catch a cab when I have got a car, and I was willing to take him to the airport. But he insisted. And as a matter of fact, he sort of said, you know, "You go back to your family. You're on parole. You go ahead." And he prevailed.

Mr. Conyers. Where did this discussion take place?

Mr. Pride. It took place in the lobby of the L'Enfant Plaza.

Mr. Conyers. And was that the last time you saw him that day?

Mr. Pride. The last time I saw him I was headed towards the elevator, and he was standing in the lobby.

Mr. Conyers. Did you notice if Judge Hastings checked out of the hotel or not?

Mr. Pride. No. I do not know what he did.

Mr. Conyers. Did he turn in his room key in your presence?

Mr. Pride. The last time I saw Judge Hastings, he was standing in the lobby of the hotel, and the last thing Judge Hastings told me was that he was catching a cab and that he was taking my advice and that he was going back to Florida.

Mr. Conyers. Did the judge give you any money to cover any charges that he may have incurred at the hotel?

Mr. Pride. He did not.

Mr. Conyers. Did he ask you to pick up a suit that may have been left at the valet?

Mr. Pride. I do not know anything about a suit. No, he did not.

Mr. Conyers. Now, when you were with Judge Hastings during the afternoon of October 9, 1981, and told him the fact that the alleged bribery was supposed to have occurred in his courtroom, did Judge Hastings express any outrage at the idea that he had been involved in such an effort?

Mr. Pride. No. He did not express outrage. Judge Hastings' expression was one of disbelief, dismay, I can't believe this is happening to me, tell me again, uncertainty. But not outrage. It was not outrage.

Mr. Conyers. Disbelief, yes; outrage, no. What about anger?

Mr. Pride. No, he was not angry. He was apprehensive, was perhaps a good word. He was uncertain. It was in my opinion a display of a man who had been advised of a bizarre occurrence that had taken place, and he was shocked. That is how I would describe it.

Mr. Conyers. Now, from the time that you met him at the elevator to relate this to him to the time you saw him at the lobby leave, was he out of your presence or were you out of his presence?

Mr. Pride. Well, I mean, once we got to the lobby and he prevailed by insisting that I was not going to drive him to the airport and that I should go back with my family and reminded me that I was on parole, I departed. And when I departed, I left him in the lobby. I did not look back to see whether Judge Hastings went in or out or what, because he had told me what he was going to do, and that was catch a cab and go to the airport.

Mr. Conyers. Did he make any telephone calls in your presence?

Mr. Pride. When?

Mr. CONYERS. Between the period of time that you relayed the message from John Shorter to the time you left him in the lobby of the L'Enfant Plaza?

Mr. PRIDE. No, he did not.

Mr. CONYERS. During that period of time, from the message to the lobby, were you ever outside of Judge Hastings' presence?

Mr. PRIDE. Judge Hastings and I were together from the time that I met him at the elevator with my son, whose name is Elliott, until Judge Hastings departed—until I departed from Judge Hastings in the lobby of the L'Enfant Plaza Hotel.

Mr. CONYERS. All right. Thank you.

Let's now move forward. Can you recall at some point after October 9th receiving a call from William Borders?

Mr. PRIDE. Yes, I did.

Mr. CONYERS. And what was the purpose of that call?

Mr. PRIDE. William Borders called me on the phone and told me that he knew that I had appeared before the grand jury in Miami, Florida. Reid Weinberger—I think I am pronouncing his name correctly—was the gentleman who conducted the grand jury inquiry. And Mr. Borders told me that John Shorter would like to interview me and would I come to Washington.

I have practiced criminal law since 1963, and I was pretty certain that Mr. Shorter had a right to interview me. But because of the predicament that I found myself in, and the predicament was that I had been convicted, that I had an opportunity to get my license back, that this in my opinion was a national affair—and it was certainly one that did not smell very good or have a good flavor to it—I wanted time to think about what posture that would have put me in to return to Washington to be interviewed by Mr. Shorter.

Mr. CONYERS. Did you consult anyone?

Mr. PRIDE. I got back on the phone, and I told them two things. I called the lawyer that was representing me, Tommy Simpson, on the phone and told him of Bill's request and of our conversation. And Tommy told me, reassured me that John Shorter had an absolute right to interview me, and as to whether or not I wanted to go Washington or not, that was a matter of an accommodation. If I wanted to accommodate them, to go there for it to be done, that there was nothing wrong with that.

After I talked with Tommy, it was not that I did not believe that he was giving me—it was not that I did not doubt that his advice was good, but I wanted to make—I wanted to know from somebody else. So I called W. George Allen, who is a lawyer in Fort Lauderdale, Florida, who is a friend, a mutual friend of Judge Hastings and I and at one time who was a law partner of Judge Hastings, and asked him the same question: "George, Bill Borders called me. He wants me to come to Washington to be interviewed by John Shorter as it relates to the grand jury testimony. What do you think about that? How will that affect me?"

George Allen told me the same thing that Tommy Simpson said, identical. I then called Bill Borders back and agreed, with the understanding that they would have to pay to buy my ticket.

Mr. CONYERS. So you made the trip?

Mr. PRIDE. I made the trip.

Mr. CONYERS. And were you, in fact, on parole in January 1982?

Mr. PRIDE. Yes. I was on parole until—yes. The answer is yes.

Mr. CONYERS. I have here Exhibit 127 which I am going to show you to examine. It reflects or purports to reflect the permission you obtained from the probation officer allowing you to travel to Washington, DC, to meet with John Shorter, William Borders' attorney. Would you identify this?

Mr. PRIDE. I can identify this as the request made by me from Larry White who was assigned as my parole representative. I made of him a request—as a matter of fact, yes, I made of him a request to give me permission to go.

Mr. CONYERS. Maybe I should leave this with you. Do you recall the dates of the travel permission?

Mr. PRIDE. No, I do not.

Mr. CONYERS. All right.

Mr. PRIDE. But whatever the document reflects, I would agree that that would be the time.

Mr. CONYERS. Could it have been January 21 through 24, 1982?

Mr. PRIDE. If that is what that document says, then that is when it was.

Mr. CONYERS. Mr. Chairman, I move Exhibit 127 into evidence. Counsel has a copy.

The CHAIRMAN. Is there objection?

Mr. ANDERSON. No.

The CHAIRMAN. It will be admitted.

[The document referred to was marked House Exhibit No. 127 and was received in evidence.]

Mr. CONYERS. When you met with John Shorter in Washington, DC, what of significance transpired at that meeting?

Mr. PRIDE. What of significance transpired at that meeting? At that meeting, I discovered that a court reporter had made an error in a transcription in transcribing a tape.

Mr. CONYERS. How did you discover that?

Mr. PRIDE. When I arrived at John Shorter's office, John placed me in a room, gave me a transcript, and gave me a tape recorder, and asked me would I please listen to the recording and read the transcript and give him my impression. So I listened and I read.

Mr. CONYERS. And you listened to it and you read, and what happened?

Mr. PRIDE. It did not—it was not coherent. It did not mean anything to me. I told John that I—you know, "What do you want me to say? I read it. I mean, I do not understand it." John said, "Would you read the transcript again and listen again?"

Mr. CONYERS. Could you identify the voice or voices?

Mr. PRIDE. Oh, I knew who the voices were. It was a conversation between Judge Hastings and Bill Borders. But, I mean, it did not mean anything to me.

Mr. CONYERS. Did you understand where or when that conversation had taken place?

Mr. PRIDE. No.

Mr. CONYERS. Was it explained to you?

Mr. PRIDE. No. John did not explain anything to me. When I read the transcript and listened to the tape again, I told John, I said, "Listen, John," I said, "it doesn't mean anything. Tell me what you are looking for. What am I supposed to find?" Because it became apparent to me that there was something there that was I missing. It became apparent to me that I had been placed in a structured kind of situation for some purpose for which—you know, whatever I was supposed to see I was not seeing, and it was not coming through.

Mr. CONYERS. Was it played a second time?

Mr. PRIDE. It was played a second and a third time. And when I listened to it the third time, then I recognized that where the transcribe had written "him," that, in fact, the voice on the tape was saying H-e-m-p-i-e, "Hemp," which is a name that some people—I am referred to as H-e-m-p-i-e, Hempie. Some people call me H-e-m-p. My correct name is H-e-m-p-h-i-l-l. And what that transcript had was in error. It has "him" instead of H-e-m-p.

Mr. CONYERS. Was that to you the point of playing this over?

Mr. PRIDE. Was that what?

Mr. CONYERS. Was this the point of why they were playing this repeatedly to you?

Mr. PRIDE. That was what I finally concluded.

Mr. CONYERS. Well, what happened now that it has been played one, two, three times? You finally heard that the word "him" that you thought you were hearing was now "Hemp." What happened then in this room?

Mr. PRIDE. Then I realized that the transcript and the conversation was a conversation in which the Hemp was the subject of letters that were being written for. In other words, reading it, as you read it on the transcript, you would read "writing letters for him," or words to that effect. Certainly, in essence, that would be the interpretation. But if you heard it and if it had been transcribed in accord with what had been said, then the correct reading would be "writing letters for Hemp," H-e-m-p, for me.

Mr. CONYERS. How long did you spend in the room? How much time were you there?

Mr. PRIDE. I spent at least—and you must remember this was quite some time ago. My best estimate is I spent at least two hours. John kept me waiting an inordinate period of time, first of all, coming from out of town. And then when the conference, the interview—that is what it was—took place, I would say all total at least two to two-and-a-half hours.

Mr. CONYERS. And that was in what month and what year?

Mr. PRIDE. It was in the month and year as referred to in the document: January 1972, I think. I mean 1982.

Mr. CONYERS. January 1982. Now, moving forward, after your meeting in January 1982, did you receive a call from a friend on behalf of Judge Hastings?

Mr. PRIDE. Yes, I did.

Mr. CONYERS. And who was that friend?

Mr. PRIDE. His name was Bill Larkins.

Mr. CONYERS. And was he a mutual friend between you and Judge Hastings?

Mr. PRIDE. He is a mutual friend.

Mr. CONYERS. And what was the import of that conversation?

Mr. PRIDE. He wanted to know whether or not I would agree to come to Atlanta to meet with the judge.

Mr. CONYERS. And what occurred? Did you agree or not agree?

Mr. PRIDE. I agreed.

Mr. CONYERS. You agreed to do that.

Mr. PRIDE. Right.

Mr. CONYERS. And what happened then?

Mr. PRIDE. Subsequent to that, I received a call from the judge saying that he was coming to Columbia, and that rather than my coming to Atlanta, that he would meet with me in Columbia.

Mr. CONYERS. So that, in effect, eliminated the trip and the agreement to go to Atlanta?

Mr. PRIDE. Right.

Mr. CONYERS. So you never went to Atlanta?

Mr. PRIDE. I never went to Atlanta.

Mr. CONYERS. But Judge Hastings came to Columbia?

Mr. PRIDE. He did.

Mr. CONYERS. And do you remember when he came?

Mr. PRIDE. He came in January 1972, shortly after I had returned from Washington.

Mr. CONYERS. Pardon me. Was it January of 1972 or January 1982?

Mr. PRIDE. Sorry. January 1982.

Mr. CONYERS. Now, would you describe what happened on the day that he came? This was, you have testified, on a Sunday?

Mr. PRIDE. He did not come on Sunday. At least, I did not see him on a Sunday. He told me—on a Sunday he called me on the telephone, told me he was in Columbia, South Carolina, and I said, "I'm glad you're here. Come on over. My mother would like to see you." If I am not mistaken, it was the day of the Super Bowl. "We want you to have dinner with us." You know, "Come on. Where are you? I'll come get you."

Judge Hastings said to me, "No," he said, "I don't think that we should do that." He said, "Do you know Jack Swerling?" I said, "Yeah, I know Jack Swerling. He's a lawyer in Columbia." He said, "Are you familiar with the law firm of Isadore Lourie?" I said, "Yes, I know Isadore Lourie." He said, "Would you be willing to meet with me at 9:00 o'clock in Isadore Lourie's office with Jack Swerling?" I said, "For what purpose?" He said that a lawyer from Miami, Florida, who at one time was representing the judge, whose name I cannot recall at this time, had retained Jack Swerling or associated Jack Swerling for purposes of the judge interviewing me as it related to the grand jury and as it related to this matter.

Mr. CONYERS. So you did not see the judge on Sunday, but you did talk to him by phone?

Mr. PRIDE. That is correct.

Mr. CONYERS. And he told you that he was already in Columbia?

Mr. PRIDE. Yes.

Mr. CONYERS. Before you got that call, did you know that he was on the way?

Mr. PRIDE. I do not think I did. I really do not think I did. There was one other time when Judge Hastings called. I was not in. My mother answered. He did not leave a message. He did not leave a number for me to return, but told her that he would call me back later. I am confused in those two situations. I really do not know. All I can tell you is that I am certain that he did call me in January of 1981, that I invited him over to see me, and he refused, that he wanted to interview me in what I now determined a structured kind of situation.

Mr. CONYERS. And you did know that he said that he was going to come to Columbia anyway?

Mr. PRIDE. I think I did.

Mr. CONYERS. You have testified that he called you to tell you that he would come to Columbia.

Mr. PRIDE. Yes. OK.

Mr. CONYERS. So you did not really know when he was coming.

Mr. PRIDE. I was not expecting him on that Sunday, right. I did not know when he was coming.

Mr. CONYERS. Now, on the next day, Monday, did that meeting take place in Isadore Lourie's law firm?

Mr. PRIDE. Right. I showed up at 9:00 o'clock, and Jack Swerling was there and so was the judge.

Mr. CONYERS. And at the meeting with Judge Hastings, what was discussed?

Mr. PRIDE. Basically, he wanted to know about—the first thing he wanted to know is whether or not the FBI had intimidated me, had I been threatened or—"threaten" is not a good word—whether or not I had been intimidated or whether or not I had been harassed, or was the FBI putting any pressure on me. And I told him no, that I did not—I said, "Al, you know, I am not easily intimidated, and I don't let people intimidate me, and neither has the FBI intimidated me."

Then he wanted to know about the interview that took place before the grand jury, and I really do not remember if Judge Hastings asked me about the interview with Borders and Shorter or not. But I do remember that he expressed concern about the FBI and their relation with me.

Mr. CONYERS. Is it fair to say that he wanted to know if the FBI had used influence or undue influence on you?

Mr. PRIDE. I would accept that.

Mr. CONYERS. In connection with his situation?

Mr. PRIDE. I think that would better describe it than the words that I used.

Mr. CONYERS. Now, had any undue influence been used on you, or were you intimidated in any way by the FBI?

Mr. PRIDE. No undue influence had been used, and I was not intimidated by the FBI.

Mr. CONYERS. Now, was there any time during the course of this meeting that you and Judge Hastings were alone?

Mr. PRIDE. Yes.

Mr. CONYERS. And how did that come about?

Mr. PRIDE. When the interview concluded, I again told him that my mother wanted to see him. I wanted to talk to him because I wanted to know what was happening. And it was difficult to do so in front of another lawyer, and I said, "Come on, Al"—that is what I refer to him as. I said, "Come by the house." He said, "No." He said, "I'm catching a plane"—I really do not recall whether or not the judge was going to Washington or Florida, but I do recall it was either one of those two places. And he looked at his watch, and he told me that he had limited time. I said, "Well, let me take you to the airport." And he said, "No," he said, "I'll catch a cab." I said, "Listen, let me take you to the airport."

Mr. CONYERS. Well, was the judge eager to talk to you?

Mr. PRIDE. The judge did not express any eagerness to talk to me. I was eager to talk to the judge.

Mr. CONYERS. Was the judge reluctant to talk to you?

Mr. PRIDE. The judge told me that he did not want me to take him to the airport, and I insisted, and I prevailed.

Mr. CONYERS. Now, during this drive, what kind of discussion ensued between you and Judge Hastings?

Mr. PRIDE. I wanted to know exactly what was happening. I had just gotten back from up there with Borders and Shorter and that I had heard that tape and that I had understood that they were writing letters, and I wanted to know, you know, what kind of letters were they writing, and what was this all about. And Al said to me—excuse me, Judge Hastings said to me, he said, "We were trying to help you." He said, "We were writing soliciting money, and we were also soliciting members of the National Bar Association to write letters to help in your readmission to the bar."

Mr. CONYERS. What did you tell him?

Mr. PRIDE. I made it very plain to the judge that that was an officious act; that if you were doing that, you should not have been doing that because I did not ask you to do that. That would not help me, and I did not want you to do that.

Mr. CONYERS. How did he react to that?

Mr. PRIDE. He said, "Listen, you didn't have to give your permission. You didn't have to know." I mean, he was not mad with me. He was trying to state his case. He was trying to be convincing. He was saying, "Look, we were writing the letters because we were helping you." He calls me Hemp. He said, "Hemp, there are many things that I have done or we have done to help you that you didn't give permission on." And I was insistent over the fact that that may be true, but in this instance I did not need any help from you. I did not expect any help from you. And I made it plain that you and Bill writing letters in a situation like this would hurt me because my problem was well in hand, plus I knew that my problem was with local people. And I had a pretty good—you know, I had a pretty good range.

Example: The person who represented me in my readmission was a lawyer by the name of Dave Rymingson. Dave Rymingson and I lived in the same condominium complex. I think we are the same age. Dave Rymingson is probably about a fourth-generation white lawyer in Columbia, South Carolina. He is prominent. During the days of segregation when the General Assembly formed what was a GRES committee in which they took public funds and hired private lawyers to preserve segregation, Dave Rymingson's law firm went all over the country representing, defending segregation. Dave Rymingson argued before the United States Supreme Court at one time that there were ethnological differences between blacks and whites.

Dave and I had a relationship. I certainly was not an admirer of that argument. But times had changed, and Dave came to me. Dave told me, "I don't like the way things went down. I don't like, you know, what happened to you. I don't like the way it happened to you." He offered to represent me, and Dave was a man of power and influence. And I knew if I had Dave Rymingson and I had Tommy Simpson, I had a team. And I knew exactly what I was doing, and I wanted—you know, and I am outspoken, and Al and Bill have helped me in instances when it was really help that I did not ask for, once—

Mr. CONYERS. Well, let me just interrupt you to get back to these letters or these so-called letters. Had there been any discussion of these letters during the time that you were meeting with Judge Hastings in the law office in Mr. Swerling's presence? The letters that you talked about in the car on the way to the airport?

Mr. PRIDE. No, no. I brought the letters up in the conversation on the way to the airport.

Mr. CONYERS. And before that, there had been no conversation about them in the law office?

Mr. PRIDE. There had been no conversation in the law office, or there had been no conversation, period, about the letters.

Mr. CONYERS. Now, after this meeting in Columbia, South Carolina, with Judge Hastings, did there come a time when you were interviewed in Columbia by agents of the FBI?

Mr. PRIDE. Yes, on several occasions.

Mr. CONYERS. At that interview or one of them, did you agree to allow the Government to record a telephone conversation—strike that. Did you agree to allow the Government to record telephone conversations on your phone?

Mr. PRIDE. Right. I did.

Mr. CONYERS. And what were the circumstances that allowed you to have this occur?

Mr. PRIDE. In my opinion, this had become a nasty national affair. I wanted my license back. And I had placed my trust and confidence in Tommy Simpson, who was a lawyer. And I was on the right track, and I think that my appearance here today as a lawyer is prima facie evidence of the fact that I certainly must have, you know, made some progress, that I accomplished what I set out to do. Tommy told me, he said, "I don't want this to spill over into you. Is there anything going on between you and the judge? Do you know the"—I cannot remember the name of the people, the Romanos? Is that right?

Mr. CONYERS. That is close enough.

Mr. PRIDE. Whatever. I told him no, I did not. He said, "Do you know"—I have forgotten some other name. I said, "No, I do not know them." He said, "Then, I think that you should go ahead and let them tape the conversation."

When Al called me on the phone, they taped the conversation that took place between Judge Hastings and I.

Mr. CONYERS. You were doing that to protect yourself?

Mr. PRIDE. I did that at the advice of Tommy Simpson who represented me because he told me that that was in my best interest.

Mr. CONYERS. What were you concerned about that might happen if you had not taken this action?

Mr. PRIDE. Well, personally, I was not concerned about anything because I knew that I did not have a thing to do with this and did not know anything about it. But I know the Government, and I had—you know, I knew what the Government did to me when they put me in jail and how unfair they could be. And I wanted to make sure that they did not do me like that again. And when Tommy told me that that was one way that I could certainly show that I had absolutely nothing to do with this, I went exactly along with his instructions because I wanted my license back, and I did not want the Government to conjure a situation where all of a sudden it became, instead of a duet, a trio.

Mr. CONYERS. Now, eventually, Judge Hastings called you.

Mr. PRIDE. Yes, he did.

Mr. CONYERS. What was that conversation about?

Mr. PRIDE. Judge Hastings called me. First of all, Judge Hastings knew, had found out that I was just out—I was some kind of mad because people in the National Bar began to look at me and say, you know, "Hemphill Pride is working to hurt a black judge down in Florida who has been his friend all of his life." All kinds of vicious rumors went around, all kinds of suspicions. And I called George Allen and Ed Bell, who was past president of the Bar Association, and a number of them and told them and confronted them with the fact that I had heard what they had said about me, that I did not like it, and that they were impugning my reputation. I thought I had been put through enough already because I had been put in jail for something that I certainly had no right—that was not fair in any respect. And Judge Hastings was worried about the fact that I was upset. And if you listen and read that conversation, he calls on the phone, and he says, "Listen, Hemp, people know you, and most important, I know you. And you know you have good values, and that is nothing but the Government that is spreading all of that gossip and larceny on you in order to turn you into me. But I'm your friend, you're my friend. I don't feel that way about you." And then he got emotional. He said, "Reid Wein"——

Mr. CONYERS. Weingarten.

Mr. PRIDE [continuing]. "Weingarten, I'm going to whip his ass," which he did. He said, "I'm going to beat him in court." That is what he meant when he said that. He did not mean physically, I am going to box him or do anything to him violently. But he said, you know, "I'm waiting on him down here, and I can take care of myself."

Then he went on to say, "Now, how are you doing?" I said, "I'm doing fine." He said, "Well, listen, you know, don't let them do that to you. Don't let them turn you into me." And I went on to tell Al, I said, "Listen, you get, you know, the word straight. I wasn't involved in this, and I don't like what lawyers are saying about me. I have had enough trouble in my life already. My family name has been impugned, and I don't want any junk." And that was the total of that conversation.

Mr. CONYERS. The judge assured you that he did not think you were the Government's star witness?

Mr. PRIDE. Oh, yes. I mean, he made that very plain, and he made it very plain to me that that was a plan, in his opinion, that the Government had done.

Mr. CONYERS. By the way, did he ask you anything about your interview with the agent, FBI agent?

Mr. PRIDE. Al was emotional in that conversation. I got the feeling that Al knew, first of all, that the Government had tapped, because if you read the transcript, he says, "What was that on the line? Who was that that cut in?" I said, "I don't know who it was that cut in."

But it was an emotional conversation in which he was—please excuse the expression—well, he was peeved and did not like, you know, the rumor and the gossip that was going around. We had been friends all of our lives, and all of a sudden it appeared that we had been turned into each other and on to each other. And in my opinion, it was a telephone conversation in order to certainly put me at ease because I was highly upset about that.

Mr. CONYERS. I can imagine. Now, did you receive a call from Mr. Borders?

Mr. PRIDE. Yes, I did.

Mr. CONYERS. That was taped?

Mr. PRIDE. Yes. You would have to read that because, honest to God, I have absolutely no recall of what that conversation was about. And that conversation between Mr. Borders and I was not mailed to me in the material that was sent to me from your office. And when I was told that his conversation came in during that time, I did not even remember that it had been taped. But I do recall that I was told that it was a conversation which he simply wanted to know how are you doing. And according to the Government's view of that conversation, there was nothing prejudicial or harmful in it. I have not seen it. I do not know. That was their interpretation, so, therefore, I cannot speak on it.

Mr. CONYERS. Surely. I have House Exhibit 54B which I would like to bring to your attention. It is already in evidence. I want you to just take the opportunity to review it.

[Pause.]

Mr. PRIDE. This, what you have given me, has been marked as Exhibit 546 for the House, and this is a portion of the tape that I heard in John Shorter's office of the conversation between Al Hastings and Bill Borders in which I discovered "him" was not "him" but it was really "Hemp." But this is not——

Mr. CONYERS. Where they cover this?

Mr. PRIDE. Right. That is not the conversation purportedly that was taped between Borders because I have never been furnished a copy of it, I really do not remember it, and could not tell you what was said.

Mr. CONYERS. Have you had an opportunity to review this?

Mr. PRIDE. The only time I—the answer is no. But the accuracy from what I read, is what I recall from John Shorter's office, and the most important thing on that exhibit, whatever the number was—I think it was 546—was the fact that that was the tape in which there was an error in the transcription, because where they wrote h-i-m, I heard H-e-m-p.

Mr. CONYERS. This, then, is the transcript of the tape that you listened to at Attorney Shorter's office on which you identified the word "Hemp"?

Mr. PRIDE. That is correct.

Mr. CONYERS. Now, in that conversation, there are references by Mr. Borders and Judge Hastings to doing something for you. Now, in the late summer or fall of 1981, did you write anything down for Mr. Borders?

Mr. **Pride**. Did I write—oh, OK. No, I did not write anything down for Mr. Borders, and I did not write anything down for Judge Hastings either.

Mr. **Conyers**. No written information was sent from you to them?

Mr. **Pride**. The only letter I ever recall writing was a letter that I wrote when I asked the judge to raise some money, and he told me he could not do it because he was a judge, and, second of all, that he did not think my theory would fly as it related to a selective prosecution.

Mr. **Conyers**. Now, to the best of your knowledge, in the late summer or even the fall of 1981, was Mr. Borders scheduled to come back to you to receive anything or get more information of any kind?

Mr. **Pride**. Well, that is a very difficult question. I mean, that is so general. Actually, Congressman, I cannot answer it like that. Mr. Borders was helping me, as I told you, to obtain my early termination from parole. If you are asking me was Mr. Borders supposed to get any information that was supposed—that he was to use to help me in order to get my license back, the answer would be no, my license being my license back to practice law.

Mr. **Conyers**. He might have been helping you in some other respect, but not in that respect?

Mr. **Pride**. That is correct. I had a local problem, and Mr. Borders or neither Judge Hastings could help me.

Mr. **Conyers**. Did Judge Hastings, in connection with what you call your local problem, did he send you anything in the mail concerning that?

Mr. **Pride**. If you are referring to my efforts to get my license back, Judge Hastings sent me nothing in the mail relating to getting my license back at all.

Mr. **Conyers**. Now, in——

Mr. **Pride**. Well, I received nothing from Judge Hastings. I do not know what Judge Hastings put in the mail, but I received nothing from Judge Hastings.

Mr. **Conyers**. Now, in summer, fall of 1981, including October 5th of that year, were you seeking any kind of financial assistance from either the judge or from Mr. Borders?

Mr. **Pride**. In 1981?

Mr. **Conyers**. Yes.

Mr. **Pride**. In the fall of 1981—when I was released from prison, I had two jobs. If I remember correctly, one of them was paying about $17,000 a year, which was a consultant for Dennis and Associates. No, I am sorry. Strike that. Dennis and Associates I think was about $22,000 a year, and the Urban League was about $17,500 a year. I never did work a whole year on either one of those jobs. But I did not have any money, but I could—and neither were they sending me any money, and neither did I have a hat out for it. You know, I had not raised the flag for assistance.

Mr. **Conyers**. OK. A couple more questions. Do you know any of the following people: Andrew Chisholm?

Mr. **Pride**. Andy Chisholm?

Mr. **Conyers**. Yes.

Mr. PRIDE. Yes. Andy Chisholm is a doctor, and he teaches school at the University of South Carolina.

Mr. CONYERS. Do you know Carolyn McIver?

Mr. PRIDE. I think I do, but I am not certain on that. No, I do not.

Mr. CONYERS. Do you know Eleanor Golar-Williams?

Mr. PRIDE. Yes. Dr. Williams was a teacher at the University of South Carolina who is now retired.

Mr. CONYERS. Could you have known two of these three people in 1981?

Mr. PRIDE. I am certain that I knew Chisholm, Dr. Chisholm and Dr. Williams in 1981.

Mr. CONYERS. Did you have any occasion at any time during 1981 to receive any telephone calls at either the home phones or office phones of any of these three persons?

Mr. PRIDE. I have never been in Dr. Williams' office to make or receive a telephone call. This is something that I thought of, recently thought about. When I got home from Maxwell, my son, Hempie, who is in college, was not doing very well in high school. So I took him over to the University of South Carolina, and after school, enrolled him in a program to help in his skills. And that program was in the building where Dr. Chisholm's office is. I have used Dr. Chisholm's phone, but I have never received or used Dr. Chisholm's phone in connection with any matters that might be related to this committee's probe as it relates to Judge Hastings or Mr. Borders.

Mr. CONYERS. Well, thank you very much, Mr. Pride. You have been very helpful.

Mr. Chairman, with your permission, we will now uncover the entries on our chart for October 9th around 2:45 p.m. and October 9th, 9:00 p.m.

The CHAIRMAN. Is there objection to that? Or do you want to see what is behind these entries in order to know?

Mr. CONYERS. That is October 9th, 2:45 p.m. and October 9th, 9:00 p.m.

Thank you.

The CHAIRMAN. Is there cross-examination of the witness?

CROSS EXAMINATION

Mr. ANDERSON. Yes, Mr. Chairman, there is.

Good morning, Mr. Pride. Now, you were having some financial difficulties even before you were indicted, were you not?

Mr. PRIDE. And right now, too.

Mr. ANDERSON. And those difficulties increased after your indictment?

Mr. PRIDE. They certainly did.

Mr. ANDERSON. And when you were indicted, you turned to Bill Borders for help; is that correct?

Mr. PRIDE. I did.

The CHAIRMAN. Counsel, I could not hear that question. I am sorry.

Mr. ANDERSON. When you were indicted, Mr. Pride, you turned to Bill Borders for help?

Mr. PRIDE. I did.

Mr. ANDERSON. And Bill Borders came down to Columbia, and he brought John Shorter down to represent you, did he not?

Mr. PRIDE. Just the opposite. He came down to Columbia, brought me to Washington to meet John Shorter, but your point is right.

Mr. ANDERSON. And did he bill you for those services at all?

Mr. PRIDE. Who?

Mr. ANDERSON. Bill Borders.

Mr. PRIDE. Never.

Mr. ANDERSON. And after you were convicted and while your appeal was pending, Mr. Borders again brought you to Washington, did he not?

Mr. PRIDE. Right. I could not find a job in Columbia, and Bill brought me to Washington and found me a job at a place called United Planning Organization. And as I think he said yesterday, he owned Adam Clayton Powell's old apartment, and he let me stay there.

Mr. ANDERSON. He let you stay there without paying rent?

Mr. PRIDE. That is correct.

Mr. ANDERSON. Now, would it be fair to say that during that period Mr. Borders was your closest adviser and confidant?

Mr. PRIDE. He was one of them.

Mr. ANDERSON. And Mr. Borders remained a friend while you were in prison, did he not?

Mr. PRIDE. He certainly did.

Mr. ANDERSON. And your financial difficulties continued to mount throughout this period?

Mr. PRIDE. That is correct.

Mr. ANDERSON. Now, you testified just a moment ago that you got two jobs when you got out of prison. One of those really only last I think six weeks, until about June, did it not?

Mr. PRIDE. Both of them together lasted less than a year and probably less than six months.

Mr. ANDERSON. And over the time from when you were indicted and in prison, judgments and other kinds of difficulties had been mounting and were reflected in the public record?

Mr. PRIDE. That is correct, because the way that I was suspended with that *ex parte* order, my income was cut off immediately. I could not pay my creditors, and it resulted in judgments being taken against me.

Mr. ANDERSON. Now, you initially had the two positions, the Urban League and Dennis Associations, but after the Urban League project ended, you were then down to just the Dennis and Associates for the rest of 1981 or however long it lasted; am I correct in that, sir?

Mr. PRIDE. I think it was the opposite.

No, you are right. You are right. That is correct. The Urban League job was terminated first, and then I worked on for just a short period of time thereafter with Dennis and Associates.

Mr. ANDERSON. Again, following the time of your release up until October 8th, at least, Mr. Borders remained a friend and adviser?

Mr. PRIDE. He certainly did.

Mr. Anderson. And do you recall specifically the National Bar Association meeting, the annual meeting that year was held in Detroit?

Mr. Pride. That is correct.

Mr. Anderson. And do you recall Mr. Borders calling you from that meeting and asking you—I do not know whether he called you "Hempie" or not, but "Hempie, why aren't you up here?"

Mr. Pride. I recall both Judge Hastings and Mr. Borders trying to get me to come to Detroit, Michigan, to the Bar Association, and I declined the invitation.

Mr. Anderson. And do you recall that as a result of that meeting the hat had been passed and you were sent, I think something like $750 your friends had chipped in there?

Mr. Pride. Bill Borders brought me back a hat-passing collection, which I was appreciative of, of $750 that lawyers had sent me on legal fees and to assist me.

Mr. Anderson. You were appreciative, but it was a spontaneous gesture. You had not asked them to do it?

Mr. Pride. No, I did not ask him to do it, did not know he was doing it, but was appreciative of the fact that he did do it.

Mr. Anderson. Now, you did, in fact, pass through Washington, I think on your way to Atlantic City, but you passed through Washington in September 1981?

Mr. Pride. That is correct.

Mr. Anderson. And you did, in fact, have a meeting with Mr. Borders at that time?

Mr. Pride. Well, let us not call that a meeting. I had a meeting with a gentleman from the SBA. His last name was Clement, because I had a project that I was trying to get started down in South Carolina. And during the time that I was here, I called Mr. Borders to tell him where I was, and he came over and he had a cup of coffee. But it was not a prearranged meeting.

Mr. Anderson. I did not mean to suggest it was. You and he had a sit-down chat over a cup of coffee while you were in Washington.

Mr. Pride. Right. That is correct.

Mr. Anderson. And that was in September 1981?

Mr. Pride. Right.

Mr. Anderson. And apart from that visit, you also remained in communication with Borders by telephone up until the day of October 9th?

Mr. Pride. I did,

Mr. Anderson. Now, turning to your relationship with Judge Hastings, I think you have characterized him as one of your closest friends and confidants over the years?

Mr. Pride. He certainly is.

Mr. Anderson. And his friendship continued after you were convicted, did it not?

Mr. Pride. It certainly did.

Mr. Anderson. For example, he really insisted that you play a role at both his robing ceremonies in State court and in Federal court?

Mr. Pride. Over my objection. I thought that being a convicted felon and the kind of position that I was in, I was uncomfortable. And he will tell you that I told him, "Al, I really appreciate it, but

I think you ought to go another way." He insisted that I do it, and I did do it.

Mr. ANDERSON. And do you recall that during this period there was an NBA meeting down, I think, in Hollywood, Florida?

Mr. PRIDE. That is correct.

Mr. ANDERSON. And, again, he insisted that you come to that meeting, did he not?

Mr. PRIDE. He did. Not only did he insist that I come, he insisted that I--he said, "You and your family have had a hard time. You know, you are catching hell in Columbia. You come." He paid to bring me, he brought my mother, and he brought my son, at his expense.

Mr. ANDERSON. And you did not ask him to do that? That was spontaneous again?

Mr. PRIDE. It certainly was. But he asked me before he did it. I want that clear. And I——

Mr. ANDERSON. In order to get you on the plane, you two had to have discussions, and he did ask you if he could do it.

Mr. PRIDE. Right. And I accepted it.

Mr. ANDERSON. Now, while you were, in fact, incarcerated in Maxwell, Judge Hastings did send some money to your family, did he not?

Mr. PRIDE. Judge Hastings sent my mother $75 and my wife $50, and when he came to see me, he gave me $100.

Mr. ANDERSON. And after you got out in March 1981, you and he talked regularly by telephone; is that correct?

Mr. PRIDE. That is correct. I told you, you know, I think Al Hastings is a very bright person, and I appreciated his advice and relied upon it and sought it.

Mr. ANDERSON. And that, again, continued from the time you were released in March through at least October 9, 1981?

Mr. PRIDE. That is correct.

Mr. ANDERSON. Now, Mr. Pride, from the date of your initial suspension on, your goal in life was to one day regain your license to practice law, was it not?

Mr. PRIDE. Well, that certainly was a goal. My goal in life is to clear my name and hopefully one day to, you know, get somebody in Congress or somebody on this committee to look at that situation. You know, here I was a minority convicted under a HUD project, and here I am in Washington at a hearing about people who took $5 million that are called Robin Hood, and they put me in jail for $32,000 for three years that they say it took me five years to steal. Yes, my ultimate goal is to clear my name. I also wanted to get my license back, and I have done that.

Mr. ANDERSON. But a subsidiary goal and perhaps the first step in that process from the time it was suspended was regaining your license so you could walk out and practice law?

Mr. PRIDE. Right.

Mr. ANDERSON. And you made no secret about that to anyone, did you?

Mr. PRIDE. No question.

Mr. ANDERSON. Bill Borders knew about it from the outset?

Mr. PRIDE. That is correct.

Mr. ANDERSON. Alcee Hastings knew about it?

Mr. **Pride**. It was widely known.

Mr. **Anderson**. Now, just a couple of specific events. When you got out in March, for example, you sought early termination of your parole, and one of the reasons was that it would enhance your record when you did apply for readmission?

Mr. **Pride**. No. Being on parole was a—I mean, to me it was a matter of privacy. Every time I wanted to do anything, I had to get permission. And not only that, Larry White, who was my parole officer at first—I have the highest regard for him now, and we grew into that kind of relationship. But, you know, it was a disparity of treatment. Some in the parole office could call in, but yet I had no criminal record and once a month I had to go in. And I thought that they did that purely to embarrass me. And they knew me. They knew I had no criminal record. They knew I lived in Columbia, South Carolina. It was a waste of the taxpayers' money, as I looked at it, to make me come downtown, get in line with, you know, persons who like myself had criminal convictions and report. And I resented it.

Mr. **Anderson**. Do you recall whether or not you may have at least used the fact of your desire to get readmission as an argument to persuade Mr. White as to why you should receive early release from parole?

Mr. **Pride**. Those were two separate matters. If you look at Rule 37, termination of parole would not have helped me.

Mr. **Anderson**. Oh, I understand. I am just probing here whether——

Mr. **Pride**. They are two different matters. The answer to your question would be no. My seeking early termination was not and did not take a part and would not have helped me regain my license.

Mr. **Anderson**. To take another thing which you have mentioned, your sole reason for approaching Chief Justice Woodrow Lewis was an attempt to, again, lay the foundation to protect that vote when the day came to get readmission?

Mr. **Pride**. Yes. At that time, I did not see it that way, but now that I look back, I went to see him, yes, and that was to get my license back.

Mr. **Anderson**. Again, this was your planning, understanding Rule 37 and all the rest of that. Throughout here, almost of your actions, you reviewed them with regard to: Will this have a positive or a negative effect on Hemphill Pride?

Mr. **Pride**. It certainly did. As a matter of fact, I use that today in my conduct and my friends and my activities.

Mr. **Anderson**. And, again, over the summer, in your conversations with Mr. Borders and Judge Hastings, you would seek their tactical, strategic advice: How do I do this so that I can enhance the process?

Mr. **Pride**. That is correct.

Mr. **Anderson**. Now, I think you testified that at least to the best of your recollection you had not personally seen Judge Hastings between your release and October 9th; is that correct?

Mr. **Pride**. Yes. To answer your question, yes.

Mr. **Anderson**. So all of the contacts you had with Judge Hastings would have been by long-distance telephone during that period?

Mr. **Pride**. That is correct, other than the one time that he came to visit me while I was in prison.

Mr. **Anderson**. Now, Mr. Pride, after the fact, the specific events and their sequence on the date of October 9th have become matters of some consequence, and I want to run down and just probe with you some potential problems or to be sure that I am firm in my mind where we are.

You do recall that at Judge Hastings' trial, your now former, then wife, Shirley Pride, testified that, in fact, you had returned alone to your room after the conversation at the elevator for a period of time. Do you recall that, sir?

Mr. **Pride**. Well, respectfully, no, I do not recall it, and that would be putting her testimony against my testimony.

Mr. **Anderson**. I understand that.

Mr. **Pride**. Which would be inappropriate. First of all, I have never read her testimony, but I do understand that there was a discrepancy in when she said—how long she said I stayed in the room as compared to how long I said I stayed in the room. But, no, I did not hear her testify, and, second of all, I have not read her testimony.

Mr. **Anderson**. And do you recall that there came a time when you were interviewed by two men named John Doar and Stuart Webb?

Mr. **Pride**. Yes.

Mr. **Anderson**. And do you recall telling them that before he left the hotel Judge Hastings had asked you to pay for the room?

Mr. **Pride**. John Doar was wrong on that. I read that report and have it here, and I think that Mr. Conyers, I think Mrs. Fields—I called that to all of their attention that John Doar was not only wrong on that, John Doar was wrong on a number of other things. Just like that 302 report that was written by the FBI was wrong. You know, during the trial, Reid Weinberg said that 302 was my statement. That was not my statement. That was their summary. John Doar's report was not my statement. John Doar's report was John Doar's summary.

Mr. **Anderson**. Well, that interview was conducted by Mr. Doar, and he was accompanied by his associate, or whatever they call him, a name named G. Stuart Webb.

Mr. **Pride**. In the presence of Tommy Simpson, who was my lawyer, and in his office. And I would invite you to direct Mr. Simpson on his memory on that, too.

I mean, I saw it, picked it out, and said, hey, it did not go that way.

Mr. **Anderson**. And you have alluded to an FBI 302 memorandum, but in any event a report that an FBI agent wrote after interviewing you.

Mr. **Pride**. Right.

Mr. **Anderson**. And if I recall, you suggest that when the agent reported that you had told him you were a disbarred lawyer seeking readmission, you said that was wrong?

Mr. **Pride**. That was absolutely wrong. My status was——

Mr. ANDERSON. Could we divide that up? Did you tell him, in fact, that you were a suspended lawyer?

Mr. PRIDE. I did not give him—yes. To answer your question, yes.

Mr. ANDERSON. Did you tell him you were seeking readmission?

Mr. PRIDE. I do not recall the report. I do not recall whether or not he asked me that. When he came into the room to interview me, you know, he came in with the attitude, look, we know who you are, we know you have been to prison, we know you are out on probation, we know that you got permission to come in. And my answer was, yeah, now what do you want? And we went through that.

Mr. ANDERSON. Well, in any event, now, that interview was conducted I think the day following, on October 10th, was it not?

Mr. PRIDE. For some reason, I thought it was on the 9th, but it may have been on the 10th.

Mr. ANDERSON. You may be right. It was shortly after the event, anyway?

Mr. PRIDE. It certainly was. They were there.

Mr. ANDERSON. And you have seen that interview memorandum?

Mr. PRIDE. I have read it, and I am familiar with it.

Mr. ANDERSON. And that memorandum indicates that whether you told him or someone else did, he knew by the time he wrote it that you hoped one day to gain readmission to the bar?

Mr. PRIDE. If the statement says that, then I would, you know, not contest that. I mean, if—I do not—if it said——

Mr. ANDERSON. Could I show it to you to refresh your recollection?

Mr. PRIDE. Yes.

Mr. ANDERSON. OK. Mr. Chairman, might I approach the witness?

The CHAIRMAN. Yes, you may.

Mr. ANDERSON. Let me show you what is on its face an FBI 302 interview memorandum dated—typed October 19th, reporting on an investigation on October 10th, and direct your attention to the second paragraph.

Mr. PRIDE. Oh, second paragraph. I am sorry.

I do not see in the second paragraph—I see in the second paragraph where he says that I said I was disbarred. He was attempting to—if he said that, I would not deny it. Do I recall saying it? That was certainly paramount on my mind, and I might have said it. I make no big issue about that either way.

Mr. ANDERSON. But in any event, his report was—do you recall the names of the two agents?

Mr. PRIDE. I believe it was Bird and Murphy.

Mr. ANDERSON. They are signed by Bird and Foster. Does that refresh your recollection?

Mr. PRIDE. It was two FBI agents. I do not recall.

Mr. ANDERSON. And their report indicated that Pride advised he was a disbarred attorney and is presently attempting to regain admission to the bar? At least, that is how they heard it, the report.

Mr. PRIDE. I would not deny or admit it, but I can say that the fact was that at that time I was trying to be readmitted and asked to be mindful of that. But that is a summary, and——

Mr. ANDERSON. Now, Mr. Pride, you indicated——

Mr. PRIDE. Right.

Mr. ANDERSON. And thereafter——

Mr. PRIDE. That is correct.

Mr. ANDERSON. An adopted statement. We have been plagued by summaries for eight years, Mr. Pride. I think I appreciate it perhaps almost as much.

Now, Mr. Pride, you indicated that when these agents came in, they at the outset said they knew who you were, what your status was, and what have you.

Mr. PRIDE. Right.

Mr. ANDERSON. And thereafter you were interviewed from time to time again by the FBI agents, is that correct, sir?

Mr. PRIDE. That is correct, sir.

Mr. ANDERSON. And there did come a time when, on Mr. Simpson's advice, you wired up—I don't want to use the word wired up or any connotation—you permitted conversations from your phone to be recorded, one with Mr. Borders, is that correct?

Mr. PRIDE. Well, what happened was they knew that Al, that Judge Hastings was going to call me back because Judge Hastings had called for me and left word with my mother. My mother had answered the phone and said Hempie is not here. And they chitchatted, and then, thereafter, she said give me the number and I'll have him call you back. Judge Hastings said, oh, no, Mrs. Pride, I'll call him.

I relayed that to Tommy, Tommy Simpson who represents me. He, in turn, relayed it to the FBI, and the FBI said, well, what does Judge Hastings want? And I said I don't know.

And that's when it came up, well, would you—Tommy told me to agree and allow them to tap in on the conversation. I was not wired up, but they did record the conversation that took place between Judge Hastings and I.

I learned for the first time that they also recorded a conversation between Mr. Borders. As of yet, I have not seen that conversation. I do not even recall that he called me. But I am told that there was nothing material in it, that he only wanted to ask me how was I doing.

Mr. ANDERSON. Would it surprise you, sir, if I were to stand here before you today and say I haven't seen the transcript or heard the tape of that call either, the one between you and Mr. Borders?

Mr. PRIDE. Well, I was surprised that I didn't. I thought I was entitled to it.

Mr. ANDERSON. Now, would it also surprise you to know that until very recently discovering these proceedings that Judge Hastings did not know that recording had been made and had not received a transcript?

Mr. PRIDE. I have gone through a similar process and dealt with the Government, and they did things that, as I look back, it made a great difference. I separate in my mind being an American and the United States Government as a difference. And they did a lot of things to me that I couldn't believe that they would do.

So, no, I wouldn't have any problem believing that.

Mr. ANDERSON. But, as a criminal defense lawyer, you at least hope that the FBI will provide you with prior recorded statements of persons who are going to be witnesses?

Mr. **Pride**. Well, yes. And I always, you know, give them the benefit of the doubt, that they will do what is just and proper.

Mr. **Anderson**. Some days it is hard to maintain the benefit.

Mr. **Pride**. I have had the occasion to be disappointed.

Mr. **Anderson**. Mr. Chairman, might I have just a moment to consult?

The **Chairman**. Yes, you may.

[Pause.]

Mr. **Anderson**. Mr. Chairman, somewhat to my own, and I am sure to the committee's surprise, I have no further questions.

The **Chairman**. Is there redirect examination?

REDIRECT EXAMINATION

Mr. **Conyers**. Yes. Briefly, Mr. Chairman. Just a few questions.

In connection with Carolyn McIver's telephone call, Mr. Pride, did you ever receive a call at Carolyn McIver's office in 1981?

Mr. **Pride**. I would have to take the position that I think I know who Carolyn McIver is, but not enough to feel comfortable to tell you who she is. But the answer is I don't think I've ever been in her office. I don't think I have ever seen her. And anything that I said about Carolyn McIver would be pure speculation.

But I have no relationship with her, but I do, as a result of being involved in this matter for nine years, have found out and think I know who she is. But my answer to you is that I have no recollection of being in her office or ever seeing her or being in her presence.

Mr. **Conyers**. I understand.

Did you ever receive a call at Mrs. Golar-Williams' home?

Mr. **Pride**. No, I've never been in Mrs. Golar-Williams' home in my life.

Mr. **Conyers**. Now, after your release from prison in 1981, did either Judge Hastings or William Borders help you obtain a job?

Mr. **Pride**. No. After my release from prison, no.

Mr. **Conyers**. No. Prior to your indefinite suspension from the South Carolina Bar in May 1981, you have testified that there were various proceedings addressing that matter, did you not?

Mr. **Pride**. That is correct.

Mr. **Conyers**. And with respect to any of those proceedings in 1980 and 1981, including the appeal to the South Carolina Supreme Court's initial filing, the appeal of the bar recommendation of disbarment, did Judge Hastings assist you in any way?

Mr. **Pride**. Judge Hastings did not assist me in my reinstatement as a lawyer as it related to the process or the procedure. Judge Hastings assisted me by being a confidente, by helping me plot strategy, by letting me bounce things off of him that I want to do, and sharing with me his opinion which oftentimes brought to light another side that I would not have seen or thought of if I had not talked with him.

Mr. **Conyers**. Now, with respect to those same proceedings, did Bill Borders assist you in any way?

Mr. **Pride**. Other than what I have just described as Judge Hastings' role, that is the identical role that Mr. Borders played. But so far as, you know, the procedure or character witnesses or writing letters, I want to make that very clear, that neither did.

Mr. **Conyers**. Thank you very much.

That concludes our redirect, Mr. Chairman.

The **Chairman**. Is there any recross examination?

Mr. **Anderson**. No, Mr. Chairman.

EXAMINATION BY THE COMMITTEE

The **Chairman**. Mr. Pride, Let me ask a few questions here.

When you relayed to Judge Hastings the information that John Shorter had given you on the telephone there in the L'Enfant Plaza Hotel about Borders being arrested and involving a bribe in Judge Hastings' court, what was your impression of Judge Hastings' reaction? You indicated it was surprise and all. But did you have an impression as to whether he felt that he had been in some way discovered, or something had been done which directly involved him, or was he just confused and surprised and dismayed?

Mr. **Pride**. The latter, dismayed, surprised, confused.

The **Chairman**. But there was nothing that you picked up to indicate that he felt personally threatened by it?

Mr. **Pride**. No. Shock is the word that I think would best describe what I observed and what his conduct demonstrated, and disbelief.

The **Chairman**. When you gave him advice to go back to Florida before he talked to the FBI, it occurred to me when you were relating the advice your attorney gave you, Tommy Simpson, about how, if you were not in any way involved or knowledgeable about this, you should go ahead and agree to have your telephone tapped if that was something that the FBI wanted to do.

Did it occur to you that advising Judge Hastings to leave town when the FBI was trying to contact him and return to Florida could be misinterpreted, or it could be interpreted by the FBI as him trying to avoid interviews on this subject or stalling for time, or something like that?

Mr. **Pride**. Well, first of all, may I preface my statement by saying that I come to you, not as a volunteer witness, but by virtue of subpoena.

And, second of all, may I preface it further by telling you that there is no agreement that has ever existed between the Government and I as it relates to my testimony or appearance before you or any other committee.

And, thirdly, I would like to remind you, as I recall, flight is no indication of guilt. And I did not see or did not advise Judge Hastings to escape.

I think people do better on the home court, and Al was a friend, and I saw this as, you know, a hell of a damn situation, especially to be in Washington and to be involved in it. And I thought he had more clout in Florida, and that if he had to respond to anybody, he would certainly be stronger and in a much better position, but I did learn from Bill that any offense that did occur in Florida; that it would be to his best. And I was thinking of him.

I think that if Al had asked me—I love Al. Al is my friend. And if Al had asked me, you know, I was disappointed that he wouldn't let me drive him to the airport. And I think that if he had asked me to do something to help him in that instance, I might have forgotten to even think about himself in order to help him because I knew him, I had observed him, I had never seen him do anything to break the law. I have lived with him. I had traveled with him. And I knew his family.

And so far as Al Hastings, I thought Al was a maverick in terms of being a Federal judge, and was shocked as hell when he got the job because of his being an outspoken, no nonsense, sometimes lack of diplomacy kind of person. And when I say lack of diplomacy, I mean he never bit his tongue. Maybe that's why we were friends because I'm outspoken too. But I thought they were messing with him really, to put it quite frankly. And I wanted to help him.

The **CHAIRMAN**. I think you referred to your conversation with Judge Hastings there in the lobby of the hotel right before he went to the airport, you referred to that as sort of a mini-debate where you were intent upon taking him——

Mr. **PRIDE**. Right.

The **CHAIRMAN** [continuing]. And he was intent upon taking a cab.

Which airport were you intent on taking him to?

Mr. **PRIDE**. I'd taken him to New York to the airport if he wanted to. And I didn't have an airport in mind to carry him to.

To tell you the truth, I didn't know, even though I had lived in Washington, when I think of airports, I only think of an international airport because that's the only one that I've ever come in and out of, coming from Columbia, South Carolina——

The **CHAIRMAN**. This is National Airport?

Mr. **PRIDE**. National Airport, right.

The **CHAIRMAN**. Right. So that's the one you had in mind?

Mr. **PRIDE**. Right.

The **CHAIRMAN**. Because that's the only one you've ever used?

Mr. **PRIDE**. That's correct.

The **CHAIRMAN**. And there was no discussion between you and the judge about any problem with going to National Airport that you recall?

Mr. **PRIDE**. There was no discussion between the judge and I about going to which airport. It was only wherever he wanted me to take him, I would have took him. And I, in my mind, thought of National because that is, so far as I'm concerned, the Washington airport. I do know now that there is a Baltimore-Washington and there is Douglas but—does that answer your question?

The **CHAIRMAN**. Yes, it does.

When you heard the tape and realized that your name was being used in this, and when you went up to Mr. Shorter's office and heard the tape and the reference to "letters for Hemp," what was your reaction to that? Did you believe that in fact Judge Hastings and Bill Borders were preparing letter for you, or did you think this was intended to convey that and, in fact, was conveying something else?

Mr. **PRIDE**. When I saw that, I knew that whatever they were intended to do, I wasn't going, you know, be a part of. I knew they had no business doing that. And I knew that that would cause a problem for my readmission to the bar. I wanted no part of it. And

I wanted to make it clear to John Shorter in the office, you know, that if that's part of a defense or something that you are write letters, you know, you can't count on me because I ain't coming. You weren't writing anything to me because you didn't ask me. And you know me well enough to know that—and I do realize that they did do things to me that I didn't ask them to do. And I was appreciative and accepted.

But when it came to my getting my license back, I was driving that bus and I knew exactly where, you know, the players were, where the bodies were, and I knew the buttons to touch. And they knew, in my opinion, from my conversations that I was elated and enamored with the progress that I had made. And I had a big hurdle to go because, in South Carolina, they had never readmitted a black lawyer that had been suspended in the history of the State.

The CHAIRMAN. Is it fair to say that you were upset or mad about them making those references in that phone call for "letters for Hemp" because your name had been brought into it, or because you in fact thought they were writing letters and those letters were going to interfere with your——

Mr. PRIDE. Right.

The CHAIRMAN [continuing]. Other plans?

Mr. PRIDE. That's exactly what it was. I said Al and Bill were writing letters, and this is going to come out in the trial. It's going to hurt me. You did not have my permission to write any letters, and if you wrote any letters, my position is going to be you didn't have any business doing it and you should have checked with me first.

The CHAIRMAN. But you did in fact believe, once you heard that tape, you did in fact believe that they agreed to write letters for you, and that's what was making you mad? They were talking together about writing some letters, and your thought was that was going to interrupt your—or interfere with your already established plans for getting admitted to the bar?

Mr. PRIDE. Right. I didn't want them involved in that, and plus the fact they had no business doing that so far as I was concerned without consulting with me.

The CHAIRMAN. Did you have any idea, or did Mr. Shorter advise you as to who those letters were being written to, or what the content of them was, or were they letters to raise money, or were they letters of recommendation?

Mr. PRIDE. I didn't go into all that. You know, once I found out about that, I took the position that sometimes it's best not to know something, and that's exactly the way I went with John.

I told John where I was with that, and that is I have my own business straight as it relates to my getting readmitted, and that Al and Bill had no business writing no letters for me. And that's what Al told me on the way to the airport. He said, "Well, Blood, you didn't have to know that we were writing letters for you." I said yes, I did, because if you wanted to help in a matter as important as this is, then you should have asked me, I said, because my position is that you had no business writing no letters for me, and if you wrote any letters for me, you know, you should have told me that I want to help you and that's what I'm going to do.

The CHAIRMAN. In that conversation you had with Judge Hastings on the way to the airport there in Columbia, did you ask him who he was writing letters to, what the purpose of the letter was, anything to get more information?

Mr. PRIDE. Yeah. That's why I wanted to ride with him alone. I was trying to get Judge Hastings alone because what I wanted to do was say, now, look, I want to know what's happening. And that's when I said to him, when he said I'll catch a cab and I'll go to the airport. I said no, you come on and ride with me because I want—and in the back of my mind was you and I are going to talk because we really hadn't had an opportunity to talk.

Al distanced himself from me after October the 9th. And I understood that because I understand that the Government could have perhaps conjured an obstruction of justice, could have read more into that than was there. And I cooperated in distancing myself, not only from Al, but from Bill Borders too, because I didn't want whatever their problems were. That might be selfish on my part, but to spill over onto what I was about to accomplish.

So, when I finally got Al alone, I got down to those letters on the way to the airport. And Al said, "Listen, Blood, we've done things for you that you didn't know and I was trying to help you." I said, well, if you were, you should have talked with me, you and Bill, because even if you were trying to help me and did write those letters, you are going to mess me up, in so many words.

The CHAIRMAN. Did you get down to the question of who he might be writing to, or what the purpose of the letters were? I mean were they letters to solicit money? Were they letters to——

Mr. PRIDE. There was—excuse me.

The CHAIRMAN. Well, you have the gist of my question. I just want to know how specific the judge got and how specific you asked him to get about what letters he in fact was purporting to write?

Mr. PRIDE. He was purporting to have people write Judge Lewis, who is the Chief Justice of the South Carolina Supreme Court, who was about 73 years old, and was born in South Carolina, have outside lawyers write him, to tell him, you know, that I was a good man, and letters of recommendations, and let me back. And also to tell friends, you know, to send me some money.

Though I had accepted money and I am in no position to ever deny that I was not in need, I didn't want to be a hat-passer. I took that 750 from Detroit, but I didn't feel good about that. I'm not trying to—my experiences have sort of taken away I hope the ego that I had. But I can tell you that I came from a family of means. My father was a dentist. My mother was a real estate broker. She was the first black woman in South Carolina that ever passed the Real Estate Board, and insurance license.

People on both sides of my family, and I'm 53 years old, have obtained a college education. So, you know, I didn't want to put that hat out. And it wasn't because I didn't need it. It was because I had some pride about myself. And I knew that if I worked hard enough at what I was going to do, that I could accomplish it. Just like I hope, and I'm working hard enough to one day to strike somebody's attention to pull a file in Columbia, South Carolina, and look and see what happened to me in that situation with that HUD project because that was the most unfair kind of situation that ever happened.

The CHAIRMAN. Mr. Pride, let me ask you about after the October 9th events, on October 9th, were there ever additional offers of help from Bill Borders or Judge Hastings, financial help, to you during the time after the 9th of October?

Mr. PRIDE. I stayed as far away from Bill Borders and Al Hastings as I could possibly could after October the 9th.

The CHAIRMAN. Was there ever a suggestion made by Bill Borders or Judge Hastings to you that you should readjust your memory to bring it more in line with a different version of the facts? Was that ever suggested to you, directly or indirectly, by Mr. Borders or Judge Hastings?

Mr. PRIDE. In the car to the airport, Al said to me, said, Blood, and it was a plea almost. You know, we were helping you. We were writing those letters for you. And I looked at Al and I said, look, Al, that ain't going to fly. You know, you and Bill are going to go this one on your own because I ain't coming. And that was the essence of my conversation.

Now, I don't take that, that Al was asking me to lie. But he certainly was trying to convince me that his efforts were legitimate. And I told—you know, legitimacy didn't mean anything. You know, intentions paved the road to hell, and I wasn't going to deal with, you know, his intentions. I was dealing with his conduct as it would affect me. And I told him huh-huh, I'm not coming. You and Bill are going to fight this one alone. I appreciate your friendship and your help and all, but no, you aren't writing any letters for me because I had my business in hand and I was on my way.

The CHAIRMAN. Now, from that last statement, I take it you did not in fact think that they were writing letters for you. You felt that that was something else they were trying to get people to believe they were writing letters for you but in fact they weren't, is that correct?

Mr. PRIDE. What I thought was that they were meddlesome; that if—you know, I didn't deal with whether it was right or wrong, or they were trying to help or not help. I dealt with the impact that it would have on me.

This thing was a national scandal, and I mean it—I can't tell you what it did to the National Bar Association; I can't tell you what it did to Negroes throughout America. Al was probably the first poor man that ever had been a Federal judge, you know, that they'd really picked in the crowd and got us somebody that was like the people and put a robe on him. And it stank. And I wasn't going to let that stand in the way of my career because I wasn't through.

The CHAIRMAN. Let me just ask it one more time to see if I'm clear on your answer.

You said that they were going to have to go this one alone by which you meant that you were not going to support any statement that in fact they were writing letters to help you.

Mr. PRIDE. Right.

The CHAIRMAN. Because you didn't think they had been writing letters to help you. You hadn't asked them to and you didn't think they were doing it.

Mr. Pride. Yeah. And plus the fact, yeah. And even if I was wrong and they were doing, I still wasn't coming.

The Chairman. You just didn't like your name involved——

Mr. Pride. That's right. I didn't want——

The Chairman [continuing]. Because you had nothing to do with this——

Mr. Pride. This was going to kill me. That's all I had—I had support——

The Chairman. You weren't sure whether they were writing letters or were not writing letters. You just knew that you didn't like being dragged into this thing.

Mr. Pride. Yes. Mr. Chairman, respectfully, I had support, but I also had people out there that were determined in Columbia that I wasn't going to get them back too.

So, you know, it was a two-sided coin. And I sure wasn't going to give them any importance by getting involved or being placed in something like that so they could say. "Ah, we got him with this. He might be doing OK."

You know, I came out not to be a model citizen, but I, you know, walked a much straighter line than I ever walked in life, and I tried to dot "i's" and cross "t's," because I wanted to get back.

Mr. Conyers. Thank you very much.

Senator Specter.

The Vice Chairman. Thank you, Mr. Chairman.

Mr. Pride, you say that you are still trying to clear your name in South Carolina?

Mr. Pride. I sure am. And I'd certainly appreciate anything that you could do as a Senator in your power to look into my situation. [Laughter.]

The Vice Chairman. Would you like me to write a letter?

Mr. Pride. No, I don't want you to write a letter. [Laughter.]

I'd like for you to put—to give me an opportunity to place me over there at that hearing at HUD and give me an opportunity to talk.

The Vice Chairman. Your position is that you were unjustly convicted?

Mr. Pride. I was unjustly—I was—I had no experience in my life as a builder or as a sponsorer for HUD projects.

The Vice Chairman. We don't have the time to go into your own case, but I think it is important in our evaluation of your credibility to know that your contention is, your position is that you were unjustly convicted. And you have expressed that.

Mr. Pride. Senator, I'm sorry you don't have the time for that because you all have really inconvenienced me for nine years, and I, you know, just put down everything to—matter of fact, today's lawyers and judges in Columbia are waiting on me at a hearing. But I hope one day somebody will have some additional time to look at me, because I deserve it.

The Vice Chairman. Well, Mr. Pride, I can understand your concern about being called repeatedly. And we on this committee are doing our duty. And we feel it is an important duty. But there are many people in this room today beside yourself who would prefer to be some place else or doing other things.

Mr. PRIDE. But there aren't many people in this room today that's spent 14 months in jail on a three-year sentence, and have a felony conviction, and were treated like I was in a project when I was recruited, and was a neophyte and was unjustly convicted.

The VICE CHAIRMAN. I hear you, Mr. Pride, and there are ways to reopen the cases. You and I are lawyers. We know that there are ways to do it. I'm not suggesting it's easy, and we regret that we can't go into the matter now. But obviously we cannot.

Mr. PRIDE. Well, Senator, to resolve the matter, certainly I would appreciate the letter.

The VICE CHAIRMAN. When you had this ride to the airport after Judge Hastings came to Columbia, South Carolina, did you ask Judge Hastings to see a copy of the letters which he had allegedly written for you?

Mr. PRIDE. I didn't want to see those letters, no. You know sometimes——

The VICE CHAIRMAN. Well, from a point of view of making a determination as to whether they had been written?

Mr. PRIDE. I didn't care whether he wrote or didn't write them. I didn't want to be involved. And if he had any letters, I didn't want to see them.

The VICE CHAIRMAN. But your concern about the letters arose after Judge Hastings and Mr. Borders were implicated in an alleged criminal bribe effort.

Had they not been involved in allegations of a bribe, would you have objected to a Federal judge or the president of the National Bar Association writing a letter for you?

Mr. PRIDE. A Federal judge and the president of a black bar association writing a white South Carolina Bar Association and the Supreme Court would not do nothing for me. I mean, that would not be worth the paper it is written on.

The VICE CHAIRMAN. Well, there might be a difference of opinion on that. But, at any rate——

Mr. PRIDE. You asked for my opinion.

The VICE CHAIRMAN. Your opinion was——

Mr. PRIDE. I thought you asked me for my opinion.

The VICE CHAIRMAN. Yes, well, I did.

Mr. PRIDE. That is my opinion.

The VICE CHAIRMAN. And that would be true even if Judge Hastings was a sitting judge without any blemish and Mr. Borders continued as president of the National Bar Association?

Mr. PRIDE. I did not want their help, and their writing the South Carolina Supreme Court and the bar in South Carolina would not have helped me.

The VICE CHAIRMAN. So your objection here was that they were meddling, not that they were trying to contrive an alibi for this conversation?

Mr. PRIDE. My objection was that I was not going to—I did not even want to be here. How do you think—what kind of position do you think it put me in when I was trying to get my license back, and here I was in the newspapers and on my way to Florida for a grand jury, and at the same time I am waiting on a two-year suspension to be readmitted? Do you think that would help or hurt?

The **Vice Chairman**. Well, I can understand that, but that is because they were involved in a grand jury investigation and were charged with crimes.

Mr. **Pride**. Certainly.

The **Vice Chairman**. But had they not been charged with crimes——

Mr. **Pride**. If they had not——

The **Vice Chairman**. Well, I think we have pursued it enough.

Mr. **Pride**. If they had not been charged with crimes, if they wanted to send me some money, I would have taken it. That would have been a help, and I could have used it. But if they wanted to get involved in the process, the procedure, then I wanted them to ask me: Hempie, what can I do to help you? Or is it OK if I do this? Or would it be OK if I did that? Not *sua sponte* on their own, you know, take upon a mission. Oftentimes, unsolicited help is hurt.

The **Vice Chairman**. Mr. Pride, you testified that you have stayed away from Judge Hastings and Mr. Borders after this October 9th event. But why was it when Mr. Shorter wanted to talk to you, and you decided that he had a right to talk to you, although you had no obligation to talk to him, but you were willing to go to Washington, DC, as opposed to having Mr. Shorter or someone on his behalf come to your home?

Mr. **Pride**. Because Tommy Simpson who represented me as a lawyer told me, he said, listen, they were my friends, because they were in trouble did not lessen the friendship between us. I was selfish because it was going to put me first above the two of them. And if I could help and not get hurt, I was willing to do it.

The **Vice Chairman**. My question is: Why go out of your way to go to Washington when they could come to your home to see you in South Carolina?

Mr. **Pride**. Because I asked Tommy Simpson and he said it was nothing wrong, and I did not mind—I mean, that was not so much of an inconvenience for me to go. I was worried about the appearance of an impropriety or whether or not it would be okay in terms of the bar.

The **Vice Chairman**. Mr. Pride, you testified that when you said to Judge Hastings that he ought not to stay in Washington to be questioned by the FBI, as I heard your testimony, I heard you say that flight is not evidence of guilt.

Mr. **Pride**. Right.

The **Vice Chairman**. You and I as a couple of lawyers may have a disagreement about that. My understanding of the applicable legal principle is that unexplained flight may raise an inference for a fact-finder, a jury, that there is guilt.

Mr. **Pride**. Well, Judge Hastings had not been charged. Borders had been charged. Judge Hastings, according to my information, was not the subject of the investigation but only a witness. And under that principle, flight is no indication of guilt.

The **Vice Chairman**. Well, but the issue does not turn on whether you are charged or not. The issue turns on state of mind.

Mr. **Pride**. No. It turns on whether or not you are the subject of the investigation.

The VICE CHAIRMAN. A couple of lawyers are having a lawyerly disagreement as to what the law is.

Mr. PRIDE. Senator, I do not want to ruin that gratuitous offer to write that letter and get on the wrong side of you, sir. I do not want to debate that with you

The VICE CHAIRMAN. That was not a gratuitous offer, Mr. Pride. That was a joking offer. [Laughter.]

Mr. PRIDE. I certainly did not take in jest.

The VICE CHAIRMAN. Well, then, I am glad at least that we have cleared up the record on that point. I just do not know enough about you to write letters. I am a careful lawyer; I try to be a careful lawyer like you are, Mr. Pride.

When you had the conversation with Judge Hastings and there was a comment about Mr. Borders having fixed a case in Judge Hastings' courtroom, and Judge Hastings said, "Mr. Borders never had a case in my courtroom," was there anything further said as to whether this was one case, a specific case, or what the circumstances were?

Mr. PRIDE. The circumstances were this: It was clear to me that when John Shorter called me that he was short of time and hurrying—I mean, that came through very clear—and that the reason why he was short of time and hurrying was that he was rushing to get to Virginia. It was like, if I am not mistaken, on a Saturday, and being a lawyer you know it is pretty difficult to find a magistrate or a judge on a Saturday. And, undoubtedly—and I have to say undoubtedly—well, no, I do not have to say undoubtedly. John told me he was going to the magistrate. So that meant that he had found a magistrate who was going to entertain the question of bond. The affair for Mr. Borders was that Saturday night, the boat ride.

The VICE CHAIRMAN. And he was in a hurry. But what did he say to you about Mr. Borders fixing a case in Judge Hastings' courtroom?

Mr. PRIDE. He told me what the charges against Bill Borders were, that he was charged with bribery, and that the charges stemmed from a case which had been fixed in Judge Hastings' court, and that the two FBI agents wanted to question Judge Hastings about that.

The VICE CHAIRMAN. So Mr. Shorter then said to you that there would be an arrangement for Mr. Ken Mundy to represent Judge Hastings, so that Mr. Shorter had made a recommendation, at least implicitly, that he felt Judge Hastings ought to respond at that point to the FBI questions?

Mr. PRIDE. He reported to me that the FBI had told him that they were looking for Judge Hastings and that they wanted to see him. He gave to me the name of the two FBI agents and a telephone number to give to Judge Hastings when I saw him.

The VICE CHAIRMAN. So my question is—we have gone over the background. My question is that Mr. Shorter was saying, at least implicitly, that Judge Hastings ought to respond to the FBI questions, and that Mr. Shorter would make a lawyer available, Mr. Ken Mundy, to represent Judge Hastings during the course of that questioning?

Mr. PRIDE. That was certainly Mr. Shorter's recommendation and what he said to me.

The VICE CHAIRMAN. So at least from Mr. Shorter's point of view, there was no occasion for Judge Hastings to depart without responding to the FBI questions?

Mr. PRIDE. He never suggested that he—Senator, the part about going back to Florida was my idea. I acknowledge that.

The VICE CHAIRMAN. It was your idea.

Mr. PRIDE. And I precipitated it, and I was the moving party that said that.

The VICE CHAIRMAN. You were the moving party?

Mr. PRIDE. Yes.

The VICE CHAIRMAN. Did Judge Hastings say to you that he intended to respond to the FBI questions in Washington, DC, before you made the suggestion that he depart for Florida?

Mr. PRIDE. He was heading in that direction, in my opinion, because first of all he wanted Shorter's number, and I told him, I said, "Look, there's no need of you trying to get John Shorter because, clearly, John made it clear to me that he wasn't in his office and he's on the way to Virginia." Then what he started next was Ken Mundy, and I said to him, I said, "Al, if I were you, I sure wouldn't take advice from Bill Borders' lawyer when Bill is already in trouble, and you're going to let John Shorter advise you?" And he took that advice. And then I gave him the slip of paper which had on it the name of two FBI agents. I thought it was Bird and Murphy. It could be—undoubtedly, I am wrong. But it had a telephone number. I had obtained that telephone number and those two names from John Shorter in my conversation, and I told Al, I said, "If I were you, I'd be interviewed by them at home, not in Washington."

The VICE CHAIRMAN. That is an important point, Mr. Pride, that you concluded that Judge Hastings was heading, as you put it, toward talking to the FBI agents for the reasons you have just given. Did he say anything further to suggest that he was heading for that interview as opposed to going to Florida, before you made the suggestion?

Mr. PRIDE. He did not say anything, but his conduct demonstrated that he took my advice.

The VICE CHAIRMAN. Mr. Pride, did Judge Hastings say anything to you which would express concern about what Mr. Borders may have done to get Judge Hastings into this situation?

Mr. PRIDE. Judge Hastings kept reviewing me on what John Shorter told me, and I told him over and over. When I say over and over, at least maybe—more than two times, less than four, all of what John had said to me.

The VICE CHAIRMAN. Mr. Pride, you know that it is Judge Hastings' contention here and in other proceedings that he was not involved with Mr. Borders, and whatever Mr. Borders did, Mr. Borders did on his own. So my question to you is: At any time when you had a conversation with Judge Hastings—and you had a number since this incident on October 8th—did Judge Hastings ever say to you in any manner that Mr. Borders acted on his own? Or did Judge Hastings ever express any concern or anger about

Mr. Borders' having made representations to fix a case in Judge Hastings' courtroom?

Mr. PRIDE. I have never discussed Bill Borders with Judge Hastings since this incident occurred in any conversation.

The VICE CHAIRMAN. Well, did Judge Hastings discuss Bill Borders with you in that taped conversation. You did not bring it up, but Judge Hastings raised Bill Borders' name. Page 8 in the transcript, for example, Judge Hastings says the fact that Bill Borders and I are "friends," and that is left to your judgment as to the characterization. But at any rate——

Mr. PRIDE. Senator, I stand on my answer.

The VICE CHAIRMAN. Now, you had a taped conversation with Mr. Borders as well at the request of the FBI?

Mr. PRIDE. First of all, the FBI—let me just get this straight. They did not ask me to tape Bill Borders' conversation. They asked me would I allow them to tape Al Hastings because I told Tommy Simpson that my mother told me that the judge was going to call me back. So that is how they knew.

I did not know that they had taped Bill Borders' conversation until this week, and neither do I independently recall my taping Bill Borders' conversation, and neither have I seen a copy of what—as a matter of fact, my first question was, when I was told that a conversation between Bill Borders and I had been taped, my first question was, well, what was it about? And the answer given to me was, well, it did not really have anything to do with this. It is not material. He was simply calling to see how you were doing. Today I have no recollection of that conversation, and neither have I seen a transcript.

The VICE CHAIRMAN. So at any rate, you had the conversation with Mr. Borders, and that conversation was taped but subject to the circumstances that you have just described. But in that conversation with Mr. Borders or in any other conversation that you may have had with Mr. Borders after October 8, 1981, did Mr. Borders ever say anything to you about any possible implications of Judge Hastings in this bribery situation?

Mr. PRIDE. No. I only talked to Mr. Borders one time, when Mr. Shorter—when Mr. Borders called and asked me to come to Washington, and I told him, you know, "I'll get back to you and let you know." Then you know the scenario after that. I checked with Mr. George Allen of Fort Lauderdale, Florida, and Tommy Simpson. When I got to the airport, Bill Borders picked me up. When we were in the car, I attempt to query Bill Borders, and Bill told me then, he said, "I would rather not talk about his matter." He said, "Let John deal with you on it," which, you know, it put me on notice that I was being placed in a structured kind of situation. I was uncomfortable. Bill and I were too close for an answer like that.

You know, it was a tipoff that I knew I was going into a structured kind of interview, that it was a kind of arms-off, hands-length distance scene that he was doing.

The VICE CHAIRMAN. Mr. Pride, speaking for myself, and I think the committee and for the Senate, we appreciate your coming here and the time you have spent. Thank you.

Mr. PRIDE. Thank you very much, too, Senator.

The CHAIRMAN. Are there other questions? There are some other questions.

Let me just advise Senators, I think for convenience of this witness why don't we complete all questions of this witness before we go to the other matter we had scheduled at 11:30.

Senator Bryan?

Senator BRYAN. Thank you very much.

Mr. Pride, have you ever seen any letters authored by Judge Hastings or Mr. Borders that would, in your own mind, tend to confirm the thrust of that conversation that you were asked to translate where your name was incorrectly transcribed as "him" rather than "Hemp"?

Mr. PRIDE. Let me tell you this: If so, it would have had to have been on two occasions. But I really do not recall it. It might have been shown to me during Mr. Borders' trial in Atlanta, Georgia, the letters by the prosecuting attorney. It might have been shown to me in Miami by the prosecuting attorney during Mr. Hastings' trial. And a third situation, and Mr. John Doar might have shown the purported letters. But I independently really do not recall it.

Senator BRYAN. So are you indicating to us that there were letters that were ultimately, during the course of the investigation, the course of these many proceedings that you have indicated that you have been asked to testify, there were letters that were produced that purported to come from Judge Hastings or Mr. Borders on your behalf without your knowledge, without your approval?

Mr. PRIDE. May I answer you by telling you what I know about the letters?

Senator BRYAN. Please.

Mr. PRIDE. First of all, I think the source was John Doar, and I am doing it purely on recollection because all of the materials that were furnished me, there is no reference that would help me refresh my memory. But I somehow or another remember that John Doar told me that the Government was quite upset because, during reciprocal discovery, Judge Hastings was late in giving them a copy of what he was writing as the letter. In other words, that he was working on a final draft of a letter which would be approved to be sent out for me. There is no question about the fact that no letter was ever sent out, but purportedly he was supposed to be working on a draft. And at one time, he produced this draft of the final form of the letter to be sent out.

Now, I somehow or another vaguely recall that at some proceeding, somebody put that letter before me, asked me to read it, and asked me did I know anything about it, first of all. My answer was no. Second of all, did I authorize it, and my answer was no. The contents of the letter I really cannot remember.

Senator BRYAN. So let me rephrase the question, if I may. Would it be fair to say that to the best of your knowledge no letter was ever sent out on your behalf by Judge Hastings or Mr. Borders?

Mr. PRIDE. No, it was not.

Senator BRYAN. And the only letter that you have referenced is a letter that was purportedly in a draft stage that, according to either Judge Hastings or Mr. Borders, may have been intended to be sent out on your behalf?

Mr. PRIDE. Right, and not Mr. Borders but purportedly that Judge Hastings had or was drafting.

Senator BRYAN. And that letter may have been shown to you at some time, or at least Mr. Doar may have made reference to it?

Mr. PRIDE. Right. It may have. As I recall, as a witness it was presented to me and said, "Did you put any input into this? Did you authorize this, or did you know about this?" Within that frame.

Senator BRYAN. Mr. Pride, when were you reinstated to the South Carolina Bar?

Mr. PRIDE. I was reinstated in April 1983.

Senator BRYAN. What role, if any, did the Federal Bureau of Investigation, the Department of Justice, or any other Federal agency play in securing that reinstatement for you, if any?

Mr. PRIDE. Absolutely, unequivocally none. I asked for none. I got none. I never made a deal with one prosecutor or one person that investigated this case. I never asked for any help. I never called them as character witnesses. None.

The only thing I asked them to do was, you know, to not block my readmission. But I made no deals with them at all, and they made me no offers and I accepted no offers.

Senator BRYAN. Mr. Pride, you have shared with the committee your sense of injustice on the basis of your conviction in this Federal proceeding. We do not know the exact nature of that proceeding. We do not want to get into any details. But it would be helpful for me to know, was your conviction secured as a result of a jury verdict, a bench trial, or a negotiated plea?

Mr. PRIDE. It was a jury verdict. I went to trial in a Federal District Court in Columbia, South Carolina, and exhausted my appeal from the District Court to the Fourth Circuit Court of Appeals to the United States Supreme Court, and then back to the district court on post-conviction. And I received no relief.

Senator BRYAN. Thank you, Mr. Pride.

Thank you, Mr. Chairman.

The CHAIRMAN. Other questions? Senator Rudman?

Senator RUDMAN. Mr. Pride, you have testified under direct examination that as you were riding to the airport that day in Columbia, Judge Hastings discussed with you the whole matter of the letters and that he was trying to do it for you, did not need your permission. You were understandably exorcised about that. That has come through very clearly. Is it your recollection today that you brought up the matter of the letters in that ride to the airport or he brought up the matter of the letters?

Mr. PRIDE. I brought up the letters. I wanted to get Al alone because I wanted to, you know—if you will accept the expression from me—get to the bottom of this. I felt like I needed an explanation and a talk. After all, you know the background, and I told you how close we are and how much of a friend we are. And I felt like he owed me an explanation, and that was an opportunity to get it. And I took advantage by bringing that up myself. I wanted to know, what is this all about.

Senator RUDMAN. Now, that is your best recollection today. It is admittedly eight years later. That is your best recollection.

Mr. PRIDE. Yes, sir, it is.

Senator **Rudman**. Let me just review some testimony you have given on a prior occasion.

Mr. **Pride**. All right.

Senator **Rudman**. Let me refer, and if you want a copy of this—I do not think you will need it, but if you do, I will be happy to furnish it to you.

Mr. **Pride**. All right.

Senator **Rudman**. It is a very short passage.

This is examination of you by John Doar in the other proceeding before the Circuit, May 25, 1985, volume 6, page 178. I will skip the preamble because it is not relevant to my question, and we get to this question:

> At the conclusion of that interview, did you have a discussion with Judge Hastings about driving him to the airport?
>
> Answer. Yes. I drove him to the airport from Jack Swerling's office.
>
> Question: And on the way to the airport, was anyone else present besides you and Judge Hastings?
>
> Answer: Just the two of us.
>
> Question. And what, if any, conversation did you have with him on that time specifically about certain letters?
>
> Answer. He told me that it was important that I remember or recall that he was trying to draft some letters for me to help me. I told him, "Al," I said, "that's not going to fly. I don't know anything about any letters, and neither am I going to get involved in testifying to any letters. None of this was done with my permission, and if I had known, I would have declined your help in the matter." That was maybe not in essence, but I am certainly certain that was what I conveyed to him.

Now, Mr. Pride, there is great consistency to most of what is in this 1985 transcript and what you have told this committee today, and I have no doubt, judging you as a witness, you are a person who is trying mightily to testify factually and accurately. But I want to point out to you, and I want to refresh your recollection, that in this transcript the first thing you say in answer to Mr. Doar's question is, "Answer: He told me that it was important that I remember or recall that he was trying to draft some letters for me to help me."

Now, could you clear up that inconsistency for me because, as a lawyer, you can understand the substantial difference between the flow of this transcript and your testimony here today?

Mr. **Pride**. Respectfully, I first of all do not see a contradiction; and, respectfully, also, Senator, what I said then is what I said today. The question that was asked me was who initiated the conversation, and that transcript does not differ from what I said. The only thing I said—Mr. Doar did not ask me who was the first one to initiate the conversation. It started off by saying he—"he" meaning Judge Hastings—said to you blank, blank, blank. When we got in the car, I was the one that brought up the letters first because I wanted to know. And when he explained to me all that he did, my answer to him was, in essence, "If you think that you are going to use that as a defense, that ain't going to fly because I ain't coming." And that is, you know, broken down not in very good language, but that is exactly the way that I said to him in the car. You know, "Those may be your intentions, but they were not my intentions, and I did not know what your intentions were. And if you had told me that you were going to do that and those were your intentions, I would have stopped you from doing it."

Senator RUDMAN. All right, fine. We will take that testimony as being essentially saying that the flow of this transcript does not necessarily go as to who originated the conversation. You originated it. That is your testimony.

Mr. PRIDE. Right.

Senator RUDMAN. All right. Let me ask you this, then, because I have taken notes as you testified here this morning, and I will look at a transcript later just to be sure for my own information. But I want to read this sentence to you again.

"Answer: He"—meaning Judge Hastings—"told me that it was important that I remember or recall that he was trying to draft some letters for me to help me." Do you stand by that statement?

Mr. PRIDE. I stand by that statement.

Senator RUDMAN. So there is no question in your present recollection today, as there was in 1985, that Judge Hastings, in some form or phraseology, conveyed to you the message that it was important, I assume to him, that you remember or recall that he was trying to draft some letters to help you.

Mr. PRIDE. Which I knew nothing about.

Senator RUDMAN. Right.

Mr. PRIDE. And told him that, in that transcript as I told the committee today.

Senator RUDMAN. All right. Let me just ask you this question, finally, Mr. Pride. How long have you practiced law?

Mr. PRIDE. All total, 18 years.

Senator RUDMAN. Tried a lot of cases?

Mr. PRIDE. Yes, I have.

Senator RUDMAN. Dealt with a lot of people?

Mr. PRIDE. Tried to.

Senator RUDMAN. Consider yourself a capable lawyer?

Mr. PRIDE. Work hard.

Senator RUDMAN. I would consider you a capable lawyer, observing you here for two days.

Mr. PRIDE. Thank you.

Senator RUDMAN. This may be a tough question for you to answer. I know Judge Hastings is a friend of yours, but I am going to ask it to you. And you can answer it if you can, and if you cannot, please say so. Do you get from that conversation when he started saying how important it was for you to remember some letters that you knew nothing about, he was essentially trying to set up an alibi about those letters for some reason unknown to you?

Mr. PRIDE. Respectfully, Senator, I think that that is for you to make that decision. I—excuse me. I am sorry.

Senator RUDMAN. Did you have an opinion?

Mr. PRIDE. I gave you the facts.

Senator RUDMAN. Well, I am asking you for your opinion, Mr. Pride. You are here as a witness. You are under subpoena. You did not come here voluntarily. I want to know if the framework of that entire conversation in that car was your sense as a lawyer—and you are an expert in this area, certainly. We all are who practice law—was this person trying to get you to establish an alibi for them?

Mr. PRIDE. Al was trying to get help. Now, you can call it an alibi if you interpret it to be that way. But it was also my opinion that he was saying to me what he believed. Please understand, Senator, I did not care what he believed. What I cared about was that I stay on the track, and I wanted him to understand that if you do believe that, that is all well and good. But that is a personal problem. Because so far as I am concerned, you were not writing anything for me. And——

Senator RUDMAN. Mr. Pride, he was asking you to recall some things that you knew absolutely nothing about.

Mr. PRIDE. I said no to Mr. Doar then, and I say no to you now. There was nothing for me to recall because I did not know anything about it.

Senator RUDMAN. And your memory is solid on that?

Mr. PRIDE. I am solid on that. I had nothing to recall because there was no discussion about those letters.

Senator RUDMAN. And yet Judge Hastings was saying to you, "It is important for you to remember those letters, Hemp."

Mr. PRIDE. And as I said to Mr. Doar, I say to you today: There was nothing for me to recall because there was no request for those letters, no discussion about those letters, and no knowledge on my part that those letters were being written.

I don't know any other way to put it any clearer to you, Senator.

Senator RUDMAN. Let me ask you one other question. Did it go through your mind at the time of that conversation, you were being asked to do something that could get you into some big trouble, since it was something you didn't remember?

Mr. PRIDE. It was on my mind all the time that this was big trouble and that it was a path that I was not headed down and I was going to keep my posture as I hope, you know, it will be kept and recorded in history in this matter, and that is that I am not for the Government and I am not for my friend Al Hastings. I am simply here to tell you what I know.

Senator RUDMAN. And if you had conveniently remembered something that you couldn't remember, it must have crossed your mind that you would have been involved in perjury.

Mr. PRIDE. Would you repeat that again?

Senator RUDMAN. Had you remembered letters "conveniently," it was important that you remember those letters, and you didn't remember them, of course, but if you stated at some point you did, you would have committed perjury, am I correct?

Mr. PRIDE. If I knew something and didn't tell the truth about it under oath, that would be perjury.

Senator RUDMAN. And that bore heavily on your mind, considering where you had just been?

Mr. PRIDE. There is no statute of limitations on perjury.

Senator RUDMAN. That is correct.

Mr. Pride, let me tell you, you have been a very forthright witness, one of the best that I have seen before this committee in terms of trying to recall things. I think we understand how difficult this must be for you, because of your relationship to Judge Hastings. We sympathize with that. We thank you for your forthright testimony and, hopefully, possibly at some point somebody will look into what you consider an injustice done to you by the Government.

Mr. **Pride**. I appreciate that, but I certainly wish that you would take more of an active role, because your sympathy just won't do it. [Laughter.]

Once you get convicted, in order to turn it over, it takes more than sympathy and the offer of just to help.

Senator **Rudman**. Mr. Pride, you are a very frank man. I appreciate your frankness.

Mr. **Pride**. Thank you very much.

The **Chairman**. Are there additional questions?

Senator Lieberman?

Senator **Lieberman**. Mr. Pride, I too appreciate your testimony, and I don't think any of us can come away from this couple of days listening to you without great respect for you personally and for your ability.

I just want to ask a couple of questions to clarify some points of fact here. You testified earlier that, I believe it was in September 1981, you came to Washington in regard to a matter that related to the SBA. Is that correct?

Mr. **Pride**. That's correct. The gentleman's name was Mr. Clement.

Senator **Lieberman**. Any recollection about what date that might have been in September?

Mr. **Pride**. No, but the Government does, they have records that would show.

Senator **Lieberman**. They have records, so we can find that out.

Mr. **Pride**. Yes.

Senator **Lieberman**. And if I understand correctly—go right ahead.

Mr. **Pride**. It was the day before Hearns and Leonard fought for the first time, because Borders was on his way there.

Senator **Lieberman**. He was on his way after you saw him, so we have got that in our records, I believe, and that was——

Mr. **Pride**. The first fight.

Senator **Lieberman** [continuing]. The second week of—right around the middle of September.

Mr. **Pride**. Right.

Senator **Lieberman**. Now, I gather that after you finished your business regarding the SBA, you called Bill Borders, is that correct, and said you were in town and wanted to come over and say hello to him?

Mr. **Pride**. No, I didn't invite him over at all. I called him up and told him what I was here for and where I was going——

Senator **Lieberman**. Right.

Mr. **Pride** [continuing]. And he came back and met me down in the coffee shop.

Senator **Lieberman**. The coffee shop of the hotel?

Mr. **Pride**. Yes. I ate breakfast and he drank a cup of coffee. This was less than—I mean it couldn't have been five minutes, because he was——

Senator **Lieberman**. You were together?

Mr. **Pride** [continuing]. He was just running.

Senator **Lieberman**. He was running.

Mr. **Pride**. Yes.

Senator **Lieberman**. Did your case, your goal of becoming licensed once more to practice law in South Carolina come up at that brief conversation?

Mr. **Pride**. No.

Senator **Lieberman**. Not at all?

Mr. **Pride**. At that point in time, I really—and I hope you don't see me as being cocky. I was not over-certain, but I was really satisfied that I was going to get my license back. I had overcome two hurdles. I had overcome a bar examination—by the way, I had to take the bar three times before I finally passed it, and I had to overcome the Character and Fitness Committee.

Senator **Lieberman**. I want you to know that it is the consensus of the lawyers who have listened to your testimony up here, that if we had to take the bar again at this point in our life, it would take us at least three times. [Laughter.]

Mr. **Pride**. It's punishment, I can tell you that. Anyhow, those were the obstacles that I had to overcome.

Senator **Lieberman**. Yes.

Mr. **Pride**. And even when I went to the—when I finally passed the bar and went to the Character and Fitness Committee, the Character and Fitness Committee told me, they said, "All right, you passed the bar, we will give you your license back," but they implemented a new rule, they said in order for you to come back, you can't have any judgments against you. Now, how in the world, you know——

Senator **Lieberman**. Understood.

Mr. **Pride**. But I didn't make any appeals to Judge Hastings or Mr. Borders to help me pay those judgments. Local people in town got together and I removed the judgments off the records and then finally, you know, I guess they just gave up and said, well, we will go ahead and swear you in, and I got my license back.

Senator **Lieberman**. So, you felt that things were moving as you wanted them to at that point?

Mr. **Pride**. I was more than certain.

Senator **Lieberman**. And at that brief breakfast, a cup of coffee with Mr. Borders in the middle of September, to the best of your recollection, did he, for instance, even ask, "Hemp, how are you doing in getting relicensed?"

Mr. **Pride**. Bill was telling me about Hearns and who was going to win and——

Senator **Lieberman**. That was it?

Mr. **Pride**. That was it.

Senator **Lieberman**. He never raised the question about——

Mr. **Pride**. No, I didn't borrow any money from him, didn't discuss——

Senator **Lieberman**. Fund-raising for you?

Mr. **Pride**. No.

Senator **Lieberman**. Writing letters for you?

Mr. **Pride**. No.

Senator **Lieberman**. None of that?

Mr. **Pride**. Absolutely not.

Senator **Lieberman**. OK. Let me take you now to October 9th, which was the day that Mr. Borders was arrested. I may have missed this at the beginning. I came in a few moments late. If I did and you testified to it, let me know, I just want to clarify.

I understood that you had lunch with Judge Hastings that day, on October 9th, went to the Apple Eye afterwards. Am I correct about that?

Mr. **Pride**. Went to his room and in his room he ordered room service.

Senator **Lieberman**. OK.

Mr. **Pride**. As a matter of fact, when I got there, he had just about finished eating, and what he was eating made me hungry, really, and I said to him, I said, "Blood"—that's what I call Al sometimes—I said, "Call room service and I want some soup and a sandwich." He said, "Well, as a matter of fact, I think I'll eat a bowl of soup and a sandwich." They brought mine up correctly, brought his order incorrectly, and he sent it back down, they finally brought us all up correctly, we sat there long enough to eat a soup and sandwich, and when we got through we both decided that we were going to drink, so we went down to the Apple—we went down to the bar, at the L'Enfant Plaza Hotel, and sat down there, we both had two drinks.

Senator **Lieberman**. OK. That's when I came in. Let me just take you back to the beginning of that day. Had you seen Judge Hastings earlier on October 9th?

Mr. **Pride**. The first time I saw Judge Hastings on October 9th, he was with Mr. Borders.

Senator **Lieberman**. Early in the morning?

Mr. **Pride**. Early in the morning, when my family first arrived, I commenced to call but there was no Alcee Hastings checked into the L'Enfant Plaza Hotel. As a matter of fact, I had driven a Toyota. I don't know if you know what that—that is one of those little small cars, with three people, 600 miles, is quite a trip, you know, and I——

Senator **Lieberman**. You were ready to stretch.

Mr. **Pride**. Right, no question. I was in taking a shower when a knock came on the door, and that's when Judge Hastings and Bill Borders came to my room.

Senator **Lieberman**. What was the nature of the conversation before you at that time?

Mr. **Pride**. You know, gregarity, glad to see you, hugging, shaking hands——

Senator **Lieberman**. Sure.

Mr. **Pride** [continuing]. You've made it. And I want to go with them; what's going on; what are we going to do; let's go out and have some fun——

Senator **Lieberman**. Right.

Mr. **Pride** [continuing]. And my wife wanted to go shopping and I went shopping. [Laughter.]

Senator **Lieberman**. Did they invite you to go somewhere with them, Mr. Borders and Judge Hastings?

Mr. **Pride**. Yes, I'm certain, that—you know, they didn't invite me, but before I could get out of my mouth what I wanted to do, my wife wanted to go—I have two boys and she wanted to go buy clothes for them, and that was my agenda so I had to wait until later to catch them.

Senator **Lieberman**. Did you, having just seen them and feeling good about seeing Judge Hastings and Mr. Borders, ask them to go shopping with you?

Mr. **Pride**. I asked Judge Hastings, because Bill Borders was on the way somewhere, he had something to do, and I do remember that. But even though Judge Hastings was leaving with him, in Washington, the kind of lawyer Bill was, it was a working day for him and he——

Senator **Lieberman**. He was still working, because he was at home?

Mr. **Pride**. Right.

Senator **Lieberman**. Right.

Mr. **Pride**. And Judge Hastings told me no, that he was going with Bill and that, you know, he wasn't going to accompany me, which wasn't surprising, he didn't want to go shopping.

Senator **Lieberman**. He specifically understood that you were going shopping?

Mr. **Pride**. Right.

Senator **Lieberman**. You invited him, too?

Mr. **Pride**. Right.

Senator **Lieberman**. OK. Let me just take you finally to that visit that you made in January 1982 here to Washington, at the request of Mr. Borders, to Mr. Shorter's law office and the transcript of that and the conversation that you heard on the tape at first, the one where it looked like it said "letters to him," but then you came to understand it was "letters to Hemp."

I want to read you a sentence or two from that. I understood that you said that you found the whole conversation confusing, but at one point—I don't believe you need refreshing on this, but if you want to see the transcript, obviously we can get it to you—at one point Mr. Borders is quoted here as saying to Judge Hastings, on this intercepted conversation, "See, I had, I talked to him"—presumably "him" is you, because you're the only name referred to here—"and he wrote down some things for me." And then Judge Hastings says, "I understand." Mr. Borders says, "Then I was supposed to get back, go back and get some more things." Do you have any idea what that means? Could you relate that exchange to any conversations that you had had with Bill Borders during September or October?

Mr. **Pride**. Now, that is why I told you that there again I realized that I was in a structured situation, because when Shorter brought me—Mr. Shorter, who was a lawyer in Columbia—he sat me down with some books and tapes and he said listen to them, and when I read that, that meant nothing to me.

Senator **Lieberman**. Right.

Mr. **Pride**. I said, John, you know, what's going down and what is this all about. He said would you listen again and read it good, and that's when I listened again and thought I read it good, and again I said to him, John, just tell me what you're looking for, you know, what am I missing, because it became apparent to me that there was something that I was supposed to catch that I didn't, and John—and as I looked back, you know, he was being professional and trying not to be suggestive, which I thought was—now I have appreciation for the appropriate manner in which he conducted the interview. He said read it again, and when I read it again, then I hard and saw that where "him" was, the tape was saying "Hemp," and then that's when I, you know, then I said, he didn't write no letters for me, what is this all about. I wanted to ask, it was then my questions that flowed.

Senator LIEBERMAN. Right. You have made very clear here this morning that you never received any letters from Judge Hastings——

Mr. PRIDE. None.

Senator LIEBERMAN [continuing]. And you never solicited them. But just to come back to this exchange, apart from the letters, is there anything that happened between you and Mr. Borders prior to October 5, 1981, when this conversation——

Mr. PRIDE. October 5th?

Senator LIEBERMAN. Yes, when this conversation was recorded, in other words, that's the date of this conversation.

Mr. PRIDE. OK.

Senator LIEBERMAN [continuing]. Which would have justified him saying that you had written some things down for him and he was going to go back to you and get some more things. Your answer is no?

Mr. PRIDE. No, we had no business going. I had missed the parole. He had tried to help me with that and that went out and I couldn't get off parole. Bill did try, gave me the name of a man in St. Louis to call. My lawyer told me——

Senator LIEBERMAN. Right.

Mr. PRIDE [continuing]. The application, the proper procedure, the call put me on base in terms of cluing me what the Parole Board would be looking for, but he also told me that the likelihood was not good, but other than that, there was nothing going on between us.

Senator LIEBERMAN. Thank you. Thank you very much, Mr. Pride, for your testimony.

The CHAIRMAN. Senator Bond?

Senator BOND. Thank you, Mr. Chairman.

Mr. Pride, had you ever been arrested before the situation with HUD in 1977?

Mr. PRIDE. Yes.

Senator BOND. And when and for what?

Mr. PRIDE. I first attended law school down at South Carolina State College, and it was during the times of the demonstrations and I sat down at one of the lunch counters in a segregated restaurant and I got arrested, along with the Honorable Deacon Jones, who played football for the Los Angeles Rams and about 200 other black students.

I got in a fight with my wife's lawyer once in a divorce action in a courthouse, but that was *nol prosegui* on both parts and there were mutual warrants. Besides some speeding tickets, that is absolutely my entire history as it relates to any kind of record.

Senator BOND. Mr. Pride, you still consider yourself a friend of Judge Hastings, there has been no falling out between——

Mr. PRIDE. There has been no relation and no talking, and it is because of this incident I thought it was best to stay away from him and I did.

Senator **Bond**. And within the weeks following October 5, you did not receive any letters in Columbia, South Carolina, sent by Judge Hastings?

Mr. **Pride**. No. Judge Hastings wrote me at least three times when I was in prison, but that was at Maxwell, and he never wrote me in Columbia, South Carolina.

Senator **Bond**. After you advised Judge Hastings of the call from Mr. Shorter, stating that Mr. Borders had been arrested, did you stay with Judge Hastings until he left for the airport? Were you in his presence during that——

Mr. **Pride**. I stayed with Judge Hastings from the time I told him until he left, until I left him in the lobby of the L'Enfant Hotel. I didn't see him go out the door, but when I left him, he was in the lobby.

Senator **Bond**. While he was in your presence, did Judge Hastings telephone his mother, his attorney, or anyone else?

Mr. **Pride**. While Judge Hastings was with me, he didn't use the phone.

Senator **Bond**. Thank you very much, Mr. Pride.

Thank you, Mr. Chairman.

The **Chairman**. Mr. Pride, let me just ask you one more question, and this covers ground you have covered several times, but I'm still confused on it. There are two versions of the discussion which you had with Judge Hastings in the car going to the airport in South Carolina, which I am trying to sort out which one is your version today.

One is that you believe the judge had been writing letters or that the judge believed he had been writing letters and was trying to get you to believe that. That's one version. The other is that the judge knew he had not been writing letters and was trying to get you to state that, in fact, letters were being written on his behalf. Which of those two versions do you subscribe to today?

Mr. **Pride**. I subscribe—and I know this is not really going to answer your question—I subscribe—and, please, I have to look back in retrospect and answer it, because in the car I wasn't trying—it didn't make me no difference in the car I wanted him to understand, first of all, that if he did write them, he had no business writing them, and if he did write them and wanted to use them as an alibi, he couldn't count on me because I wasn't going to do that.

So, my answer to you is that I don't know. I know Al Hastings as a roommate and as a very good friend, and I have never seen Al do anything that would put his character at issue. I don't know what his intentions were, but I knew what kind of impact it had on me and that is the standpoint that I responded from.

The **Chairman**. Is there any reason this witness cannot be excused?

Mr. **Anderson**. Mr. Chairman, there has been some examination by the Senators on materials that are not in evidence. In order to make the record complete, I would like the opportunity to complete, focusing entirely on the conversation in the car.

The **Chairman**. Counsel will be permitted to ask a few questions, since that issue is crucial in the case.

FURTHER RECROSS EXAMINATION

Mr. ANDERSON. Now, Mr. Pride, I just want to set some things in context so that the Senators understand it. Following the time when—well, Judge Hastings came to Columbia, South Carolina, and it was at his insistence that the initial interview was conducted in the presence of a lawyer, is that correct?

Mr. PRIDE. Yes, Jack Swerling.

Mr. ANDERSON. When he was going to leave the office and go to the airport, it was you who asked him to go with you in the car, wasn't it?

Mr. PRIDE. No question about it.

Mr. ANDERSON. He was trying to—I mean he again was reluctant?

Mr. PRIDE. He was trying to avoid being——

Mr. ANDERSON. He was trying to behave like a lawyer and a client and keep himself out of the circumstance where he could do it?

Mr. PRIDE. I am certain of that, because he told me on that Sunday, when I said, "Listen, my mom has dinner ready for you, you know, we all want to see you"—really, I'm trying to get him by myself, because I wanted to talk with him.

Mr. ANDERSON. And he's trying to avoid that?

Mr. PRIDE. Right.

Mr. ANDERSON. Just as Bill Borders did when he said you—actually, that was John Shorter. Now, do you recall after that trip, it is not merely twice that you discussed this, you were again interviewed by Agent Dale Bird. Do you recall that, sir?

Mr. PRIDE. Let me tell you, I had so many interviews and so many hearings; I'm certain I did, that he did. If you have a copy of a statement, you know, indicating, but you know, independent, I don't remember. I've been to so many hearings and asked so many questions about this.

Mr. ANDERSON. Mr. Chairman, in order to refresh the witness' recollection, might I approach him?

The CHAIRMAN. You may.

Mr. ANDERSON. Mr. Pride, I show you what facially appears to be still another FBI 302, this one transcribed on March 10, 1982, reporting an interview on March 3rd, initialled by Agent Dale Bird. I would ask if you would satisfy yourself, have you seen it before, and then direct your attention to the last paragraph on page 3, which I think carries over to page 4.

Mr. PRIDE. Yes, I recall that. I don't recall the interview, but I recall the conversation, let's put it that way.

Mr. ANDERSON. In any event, Agent Bird got it correct, he reported the conversation, he reported that you told him the conversation at the airport went as follows:

"On the way to the airport, outside Swerling's presence, Hastings brought up the Shorter"——

Mr. BRYANT. Mr. Chairman, we object to this as hearsay and Agent Bird is on our witness list. If he wants to draw it out, he can draw it out of the witness, he is the next witness.

Mr. ANDERSON. It is a report by a third party of a prior——

The **Chairman**. The objection is overruled. The witness can comment as to whether this is an accurate description of what he said.

Mr. **Anderson**. According to this, and I will stop reading, you and the judge discussed your visit to John Shorter's office, is that correct, sir?

Mr. **Pride**. Right.

Mr. **Anderson**. And at that time, you said that you had listened to the tapes, is that correct?

Mr. **Pride**. That's correct.

Mr. **Anderson**. And in that context, you reported Hastings told Pride that the conversation referred to letters he and Borders were preparing to the South Carolina Supreme Court on behalf of Pride, is that correct?

Mr. **Pride**. That's correct.

Mr. **Anderson**. Pride told Hastings that he knew nothing about such letters and had not requested such letters from Hastings or Borders, is that correct?

Mr. **Pride**. Right.

Mr. **Anderson**. Hastings replied that Pride would not have needed to know about the letters.

Mr. **Pride**. That's correct.

Mr. **Anderson**. And I take it your recollection in March 1982 would have been perhaps better than your recollection in 1985, and perhaps better than any of our recollections in 1989?

Mr. **Pride**. Yes.

Mr. **Anderson**. OK. And you also testified concerning that matter before the House about a year ago?

Mr. **Pride**. I've testified a number of times.

Mr. **Anderson**. Mr. Pride, look, you have made obviously a clear impression here. Let me just bring out, you were interviewed about this repeatedly, weren't you?

Mr. **Pride**. Yes.

Mr. **Anderson**. You were called before a grand jury to testify about it, is that correct?

Mr. **Pride**. Right.

Mr. **Anderson**. You were called by the prosecution to testify at William Borders' trial?

Mr. **Pride**. Right.

Mr. **Anderson**. You were called to testify at Judge Hastings' trial?

Mr. **Pride**. Right.

Mr. **Anderson**. You were interviewed by Stuart Webb and John Doar about it extensively again?

Mr. **Pride**. Right.

Mr. **Anderson**. You were called before the Investigating Committee——

Mr. **Pride**. In Atlanta, you are talking about?

Mr. **Anderson**. In Atlanta.

Mr. **Pride**. Before the judges?

Mr. **Anderson**. Yes.

Mr. **Pride**. Yes.

Mr. **Anderson**. Did you find that an intimidating experience?

Mr. **Pride**. No, nobody has intimidated me, you know.

Mr. Anderson. And then you were interviewed, I take it, by House Special Counsel before you were called last spring, is that correct?

Mr. Pride. Yes.

Mr. Anderson. You were called to testify in the House inquiry?

Mr. Pride. Yes.

Mr. Anderson. You have been interviewed or prepared for your testimony today with the House managers in connection with this trial?

Mr. Pride. Yes.

Mr. Anderson. And you have testified here today.

Mr. Pride. That's correct.

Mr. Anderson. I just want someone to understand what happens when you start in 1981, and you wind up with a trial in 1989.

Thank you, Mr. Pride. No further questions.

The Chairman. Is there any reason this witness cannot be excused?

[No response.]

If not, we very much appreciate your testimony, Mr. Pride. The witness is excused.

We will reconvene at 2:45, which is—we have a vote at 2:35, I am advised by the cloak room——

Judge Hastings. Mr. Chairman?

The Chairman. Judge Hastings?

Judge Hastings. Is it all right if I ask him a question, just one?

Mr. Bryant. Mr. President, we would object, strongly object to the changing of counsel to allow any further examination of this witness, number one, simply because it is a procedural violation; second, because this individual has refused consistently to testify in every single proceeding, including the House——

The Chairman. Counsel——

Mr. Bryant. May I continue my objection, Mr. Chairman?

The Chairman. Counsel, I understand the gist of your objection. The objection is overruled. The witness would please be seated again.

Judge, you are permitted to ask a question, if you have a question.

Mr. Pride, do you understand that you are still sworn and have not yet been excused?

Mr. Pride. Yes.

Judge Hastings. Thank you very much, Mr. Chairman.

Hemp, as long as you've known me, you know well enough that if I had wanted you to adopt those particular letters, I could have asked you to do so. The question is did I ask you?

Mr. Bryant. He is getting testimony from the respondent. He is testifying.

The Chairman. Examination is——

Judge Hastings. That is the ultimate question here, Representative Bryant.

The Chairman. The examination is in the nature of cross-examination and the Judge can continue with his question.

Judge Hastings. Did you understand my question?

Mr. Pride. I understood your question.

Judge Hastings. All right.

Mr. PRIDE. You could have asked me.

Judge HASTINGS. Did I?

Mr. PRIDE. No. I would like to say one thing, though. May I, Mr. Chairman?

The CHAIRMAN. You can explain your answer, please.

Mr. PRIDE. I would like to say that when I wrote Judge Hastings and told him about my theory of selective prosecution, and Judge Hastings told me in his opinion, you know, that my theory of selective prosecution would not fly, it was interesting to note that when he got in trouble that he raised selective prosecution. It sounds like you tore a page out of my book.

The CHAIRMAN. Is there any reason this witness cannot now be excused?

[No response.]

The witness is excused.

We will reconvene at 2:45——

Mr. BRYANT. Mr. Chairman, before we leave the record, I would like to raise one issue for the committee to consider, either during our subsequent meeting or when we come back, and that is the fact that on the seventh day of trial here we still have not received, the House still has not received a list of respondent's witnesses in the order they intend to call them, which was required of all of us in the filing of our pretrial statements. We have a list from them, but it is a list in alphabetical order, which is most likely not a list of the witnesses in the order they intend to call them.

Second, we have not received copies of their documents, the ones they intend to put on in their case. We don't want to be sandbagged, we don't want to have to move to recess the trial in order to prepare to cross-examine witnesses when we don't know the order in which they are going to come up, and we would like to ask the committee to instruct the respondents to submit to us that list.

Mr. ANDERSON. Mr. Chairman, may I respond?

The CHAIRMAN. Mr. Anderson, could you respond briefly?

Mr. ANDERSON. I recognize that the committee may not accept the fact that we are working as fast as we can. We are doing our trial preparation for the next day at night and trying to catch up with you. I represent that we just have, and I will disclose in the public record that, given the structure of the House's case, we will probably meet the Mayor Clark allegations first, which tells them where the witnesses are coming from. When I am in here, I can't be on the phone. We are trying to work at this and I am not trying to sandbag Mr. Bryant about the order or defer his trial preparation in any way.

We will inform the committee and Mr. Bryant just as fast as we can firm up the arrangements. We had asked for the time we had thought necessary to do it. We are here trying as hard as we can to stay up with you. There is nothing in my pocket that Mr. Bryant doesn't have on that.

The CHAIRMAN. Mr. Anderson, I do think that taking your list of witnesses and putting them in your best guess as to what order you would call them I think is a reasonable request at this time, and we would request you to do that for House counsel by tomorrow, if possible, by the beginning of our business tomorrow.

At 2:45, when we reconvene, we would like to hear from counsel on the question of calling Mr. Borders as a witness.

Mr. ANDERSON. Could I request something, and maybe just before 2:45 or just after it, in the nature of what we call a chambers conference I suppose in a trial, either with the committee or with you and the Vice Chairman, at your pleasure, Mr. Bryant and I or whomever you think? I would like a closed conference briefly to clarify a couple of matters that have arisen.

The CHAIRMAN. The Vice Chairman and I will attempt to be here and be glad to visit with both counsel.

Mr. ANDERSON. Thank you, Mr. Chairman.

The CHAIRMAN. The committee is recessed until 2:45.

[Whereupon, at 12:08 p.m., the committee was in recess, to reconvene at 2:45 p.m., the same day.]

AFTERNOON SESSION

The CHAIRMAN. The committee will reconvene.

At this point, I think it would be helpful to have both the House managers and counsel for respondent address the committee about the issue of whether Mr. Borders should be called as a witness by the committee, or whether either side intends to, and the reasons for that decision. That is something the committee wanted to make a judgment on in the near future, and we would appreciate hearing from counsel.

Representative Bryant?

Mr. BRYANT. Mr. Chairman, the House does not intend to call William Borders for the following reasons: First, the House views the evidence that we will bring forward and have brought forward as being strong to the point of being overwhelming, and we believe that Borders would add little to the case, particularly given what we view as his lack of credibility. That is to say, we believe the case we will present to the committee is extremely strong to the point of being overwhelming without Borders.

Second, Mr. Borders has, in any event, been a totally recalcitrant witness. We called him twice before the House committee. He refused to testify. He refused to testify before the Investigating Committee of the Eleventh Circuit. And even though the Senate has even now arranged for immunity for Mr. Borders, he has appealed from that immunity, which surely must be a jurisprudential first.

Third, if he were to testify, we believe his credibility is so minimal that it would have little probative value. He was found guilty of engaging in a conspiracy with Judge Hastings to obtain a bribe and served time in prison as a result of it. He has never testified in all of these years and has for all these many years been sitting on his story. He had the opportunity to testify at his trial, and he turned it down. He had the opportunity to testify at the Hastings trial; he declined. He declined to testify before the Investigating Committee and before the House subcommittee as well.

For all of these reasons, we have no desire to call him. We will take no position on whether the Senate committee should or should not call him, and we will surely participate in whatever decision it chooses to make. We would observe that since Borders was Judge

Hastings' friend for so many years, we would have expected Judge Hastings to call him as a witness.

We will not call him. We will take no position on whether the Senate should or should not.

The CHAIRMAN. Thank you very much.

Mr. Anderson?

The VICE CHAIRMAN. Mr. Chairman, I have one question for Mr. Bryant.

Congressman Bryant, I think it would be useful if you would spread upon the record, as we say, precisely what efforts the House did make to secure Mr. Borders as a witness.

Mr. BRYANT. He was called as a witness before the subcommittee and subpoenaed. He took the Fifth Amendment, as I recall. I am not sure I can add to that.

The VICE CHAIRMAN. It was represented to me in the past that Mr. Borders had declined to testify because he was on probation; and then after his probationary term was concluded, that the House made another effort to have him testify; and that even after his probationary term was concluded, which was his first reason given for not wishing to testify, that he declined on the second occasion.

Mr. BRYANT. That is correct. That is the two occasions I made reference to in this statement that I just made. The second time it was on the grounds that he might be incriminated. His testimony might incriminate him, as I understood it.

The VICE CHAIRMAN. Congressman Bryant, why do you take the position now that he is an unnecessary witness so far as the House is concerned, when you made those efforts, when the House made those efforts in the past to have him as a witness?

Mr. BRYANT. That is an excellent question. The reason is because after we saw all the rest of the evidence that had not yet come in, we were quite satisfied that the case was overwhelming and it would not be necessary to go through the legal wrangle involved in compelling him to testify—a legal wrangle which is much more involved and more difficult than it is in the Senate. We have not given to ourselves the same powers as the Senate has to compel testimony. So we felt it was no longer necessary.

The VICE CHAIRMAN. Congressman Bryant, I have one other question, and it is this: You have expressed the House's point of view in a context where at least so far the evidence as to Judge Hastings is circumstantial, and one person who would have direct knowledge as to whether Judge Hastings was or was not involved in a payoff, assuming the conclusion that Mr. Borders was involved—and from the evidence it looks very strong that he was, having been found in possession of the money and so forth. But the facts being as set forth now—and you are not finished with your case, so I do not say anything by way of any conclusion, but only a tentative statement. Why wouldn't there be a public interest reflected in what the committee would do, perhaps in what the House does in its quasi-judicial function as the indicting body and as the body presenting the case? Because you are not solely an advocate here, although the lines are not clearly delineated. I would analogize your position to a quasi-judicial position. Why is it not in the interest of the search for the truth to hear from the person who has the most direct knowledge, aside from the respondent himself, as to what happened between the two of them?

Mr. BRYANT. Well, first, again, we do not raise any objection to the Senate calling this witness. We do not intend to call him ourselves because, Senator, the members of the Subcommittee on Criminal Justice have been through this process that you are now going through already. We watched all the testimony come in. We have scrutinized this case in great detail, and began as confirmed skeptics about whether we should even be proceeding with this case. And if you had the opportunity to review the transcripts, you would find the most heated cross-examination of these witnesses by me personally as well as John Conyers, Ham Fish, George Gekas, Mike Synar and Don Edwards and others.

When the process was concluded, we were absolutely certain that this individual should be impeached and convicted, and our view was that further evidence was not necessary to do so. So we did not intend to go to the trouble of trying to get Mr. Borders here since he had already been so recalcitrant already.

In addition, we do not view his testimony as being likely to be credible in view of his relationship with Judge Hastings and the other factors that I just mentioned.

Finally, I would say with regard to circumstantial evidence, since time immemorial circumstantial evidence has been accorded quite adequate weight to convict and to imprison. We are not involved in a case here involving depriving anybody of personal rights. We are involved in a case here deciding whether or not an individual should remain as a Federal judge. And circumstantial evidence is quite adequate to base that decision on.

The VICE CHAIRMAN. Congressman Bryant, I quite agree with you about the value and validity of circumstantial evidence, but I think about the days when I was a prosecuting attorney and the insistence that I had on bringing all of the eyewitnesses forward. I have had a review of the cases, and it is not mandatory, but it is highly desirable to have the people closest to the event testify so that you can find out what everybody knows. And I am not saying one thing or another about his credibility. He may be an incredible witness no matter which way he testified. And there may be other leads. But I have those questions in my mind as to your response to the issue, and I appreciate your comments.

Mr. BRYANT. I would point out that having never testified in all these years, Mr. Borders is now in a position to come forward and say whatever he chooses to say on behalf of his lifelong friend, Judge Hastings. But, again, we are not going to object to him being brought in here. We just do not want to take responsibility for the time and the trouble that is going to be involved in getting him here when we are quite confident that we will bring the Senate and have so far brought the Senate a very adequate case.

The CHAIRMAN. Any other questions to Representative Bryant?

[No response.]

The CHAIRMAN. If not, we will hear from Mr. Anderson.

Mr. ANDERSON. Mr. Chairman and members of the committee, Representative Bryant is correct. William A. Borders was a longtime friend of Alcee Hastings until the afternoon of October 9th. In my view, having studied the circumstantial evidence, I find it underwhelming, and I find in my view this man sits here today because William Borders lied about him. Judge Hastings, absent Mr. Borders coming forward voluntarily, does not intend to call him to give him a second shot.

Representative Bryant has argued most passionately; the Senate itself has accepted extraordinary conditions for the taking of testimony in connection with Mr. Dredge, about the physical security aspects of anyone who would commit a fraud or otherwise go against persons of the ilk of Santos Trafficante. Mr. Borders in my clear view is of that ilk, and we simply are not going to put ourselves in the position of either resting—you are asking the defendant to call forth someone who the defendant has claimed now for eight years is a flat-out liar, and that is why the defendant is here. That is a bit much.

I think the burden is upon the prosecution if there is something, and I think the inference from the failure should go otherwise. As I sit here, I did not find prior to the time the matter went to the House, I did not find after the time it had come here, and I do not find on this record any evidence that is circumstantial other than underwhelming. This man stands before the bar of the Senate innocent, a Federal judge. If the House wishes to prove its accusations, I think the burden is upon them.

In any event, our defense has been since the day of the arrest that Alcee Hastings is innocent, and he stands accused solely because a man who had been his friend, and had been the friend of many in high circles until that day, lied about his ability to affect the fate of Alcee Hastings. We have no intention to give him a second chance to come forward and lie in manner that might affect the fate of Alcee Hastings. We take no position on what the committee should do.

The CHAIRMAN. Mr. Anderson, could I ask a question, please? I think it is obvious why Mr. Borders had a reason to lie about Judge Hastings at the time he was soliciting a bribe. Nobody would pay him $150,000 unless Judge Hastings was, in fact, thought to be involved so that he had a clear motive to lie. What motive would he have to lie today?

Mr. ANDERSON. Same motive that Mr. Dredge had: to ask you to impose incredible security precautions. Mr. Borders, Representative Bryant, in dealing with Mr. Deichert and Ms. Rogers, has made it clear that Santos Trafficante was a man who was capable of directing that concrete boots be put on. Agent Murphy and all conceded that Mr. Dredge has taken appropriate precautions when his name was disclosed and his role by having his appearance altered, whatever, and going into hiding and insisting on precautions even in 1989.

Mr. Borders has chosen a different route. He has never testified. He has gone to jail. He has done his time. He, I understand, presently operates a flower shop or something in this town. He is on the street. I have no information to share with you. It is my hunch that Mr. Borders, the way in which he supports himself now, may have something to do with associations he developed prior to October 9, 1981, or perhaps since that time.

I think if he comes forward and says, "I was just funning Santos Trafficante," and is asked, "Who else were you funning?" I think he would have the same concerns that Mr. Dredge would. And the only effective way of protecting himself would be to disappear into some unknown part under some unknown name. I think that Representative Bryant, has with great passion on cross-examination, indicated the extraordinary danger to William Borders in lying to persons of that ilk. In my view, Representative Bryant has to take the consequences of his own argument.

The **Chairman**. You are saying that for reasons of personal safety you think Mr. Borders still has a significant incentive to lie?

Mr. **Anderson**. Mr. Chairman, I make no—I saw Mr. Borders, I think, on two pretrial appearances when I was arguing constitutional issues back in 1982. Mr. Doar testified before the House subcommittee that it was his view that Mr. Borders had legitimate security concerns at this late stage. I take it from the testimony of Agent Murphy and Ms. Rogers, Mr. Deichert, everyone who has testified to the issue, if I am correct in my view that William Borders lied to a number of criminal associates, he has reasons of security problems. But I have no access to information on this point that has not been made available to the Senate thus far in this trial.

The **Chairman**. Senator Specter.

The **Vice Chairman**. Well, Mr. Anderson, if Mr. Borders has security concerns, legitimate or otherwise, those are matters which he can advance. We will listen to him if he wants to raise that issue. He might be able to persuade us that he should not be called even if we concluded he was a material and very important witness, or we might conclude that we would call him under circumstances to protect his security interests.

But the concern that I have—I am not quite sure how the adverse inference runs—but you are an experienced trial lawyer, and you know the general rule about an inference being raised against a party who has the opportunity to call a witness or some control over the witness. Would you consider it unfair for this Senator sitting in the capacity as a committee member to draw an adverse inference against Judge Hastings in the context of this case, where Judge Hastings and Mr. Borders were long-time friends? We do not know very much about what has happened since the date of the arrest of Mr. Borders, but we had a transcript where Mr. Hastings is talking about Mr. Borders not in an inflammatory or angry way as he talked to Mr. Pride. Would you consider it unfair if this Senator drew an adverse inference or thought that it was marked against Judge Hastings' case if Judge Hastings did not call Mr. Borders?

Mr. **Anderson**. This lawyer, Senator, would consider it grossly unfair, and let me tell you why.

The **Vice Chairman**. Why? Yes.

Mr. **Anderson**. The reason why is I do not know whether you have ever had the experience of being betrayed by a friend. I also respect your view of the theory of the case that I know; it is consistent. It has been Judge Hastings' position from the outset that he was betrayed, and betrayed in the grossest form by someone who had to that moment been his friend.

I think to suggest that Judge Hastings has now some control over the man who betrayed him—I do not know what control Jesus

Christ had over Judas, but I doubt even if he were on trial at a later point it would have been Jesus Christ——

The **Vice Chairman**. That analogy is most unpersuasive.

Mr. **Anderson**. I understand this, Senator, this lawyer has had some trouble persuading on many points. Judge Hastings in my view and on the evidence was betrayed on October 9th. Bill Borders from that date on has not been a friend.

If we are to determine whether the transcript you allude to, whether there is anything critical, I think we really ought to call for the tape. It is my understanding that you are listening to an extraordinarily angry judge if you heard the words. I understand on paper the volume, the inflection is not there. But I have not heard that tape. It has never been produced for me, but I understand it is one angry judge speaking.

Judge Hastings has since 1981 represented he was betrayed by a friend. He has not had, has exercised no control over him, and his defense was in 1983 and remains in 1989 that he is here because this man lied about him. For you to draw an inference based upon a relationship that effectively terminated on October 9th, that the judge should somehow reach out and call forward the man who betrayed him, yes, I think that would be unfair, Senator.

The **Vice Chairman**. Well, I ask you that question in all candor. My own sense is one of concern on both sides. I draw a conclusion, an inference, or it is suggested to me that neither side wishes to call Mr. Borders because each side is afraid of what he might say.

Mr. **Anderson**. I think that is a fair——

The **Vice Chairman**. And that in a sense there is an adverse inference to be drawn against both sides. That does not help very much, and we are not in the business—I am not and I do not think this committee or the Senate is—in the business of drawing adverse inferences. The Senate, this committee, I, want to find out what the truth is. Here you have a man—there are two men who know what happened, the central participants: Judge Hastings and William Borders. That is why we are pursuing this question.

Mr. **Anderson**. You will hear from one of them, Senator.

The **Chairman**. Are there other, any other questions from the committee?

The committee is scheduled to recess again at 5:30. I think the best use of our time is to proceed with additional House witnesses at this point, and then we can take this up and deliberate on it tomorrow morning or tomorrow later in the day.

Representative Bryant, would you call your next witness?

Mr. **Bryant**. The House calls Dale Bird, Mr. Chairman.

The **Chairman**. Do you, Dale Bird, swear and affirm that the evidence you will give in the case now pending between the United States and Judge Alcee L. Hastings shall be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. **Bird**. I do.

The **Chairman**. Please be seated.

TESTIMONY OF DALE E. BIRD

DIRECT EXAMINATION

Mr. **Bryant**. Mr. Bird, would you state your full name?

Mr. **Bird**. Dale E. Bird.

Mr. **Bryant**. And how are you employed?

Mr. **Bird**. I am a special agent with the Federal Bureau of Investigation.

Mr. **Bryant**. And how long have you been a special agent?

Mr. **Bird**. Fourteen years.

Mr. **Bryant**. In October 1981, where were you assigned?

Mr. **Bird**. Washington, DC.

Mr. **Bryant**. And at that time did you assist in the investigation of a case involving Judge Alcee Hastings?

Mr. **Bird**. Yes, sir.

Mr. **Bryant**. Specifically during the morning of Friday, October 9th, 1981, did you monitor over the radio the FBI's surveillance of William Borders and Judge Alcee Hastings?

Mr. **Bird**. Yes, sir.

Mr. **Bryant**. Mr. Chairman, at this time I move into evidence Stipulations 126, 130, 131, 132, 167, and 133.

The **Chairman**. Does counsel need a few moments to look at those?

Mr. **Anderson**. Proceed, Mr. Chairman.

The **Chairman**. Those stipulations will be admitted.

[Stipulation Nos. 126, 130, 131, 132, 167, and 133 were received in evidence.]

Mr. **Bryant**. At this time I will read Stipulation Number 126 which is, during their October 8, 1981, telephone conversation beginning at 9:37 a.m., Judge Hastings told William Borders that he would be arriving in Washington the next morning at 10:40 on Eastern flight 130.

Stipulation 130 is that on October 9, 1981, at approximately 10:40 a.m., William Borders met Judge Hastings at gate 20 of the Washington National Airport.

Stipulation 131 is that after picking up Judge Hastings at the Washington National Airport on the morning of October 9, 1981, William Borders drove with Judge Hastings to the L'Enfant Plaza Hotel, arriving at approximately 10:50 a.m.

Stipulation 132 is that a suite and an adjoining room at the L'Enfant Plaza Hotel had been reserved for William Borders and Judge Hastings, respectively, beginning October 9, 1981.

Stipulation 167 is that after arriving at the L'Enfant Plaza Hotel on October 9, 1981, Judge Hastings sent his suits to the hotel valet service.

Stipulation 133 is that on October 9, 1981, Borders and Judge Hastings left the L'Enfant Plaza Hotel and proceeded to William Borders' car. They then went to the Superior Court of the District of Columbia. Thereafter, they went to W&W Liquors, and then to Borders' law office.

Mr. Chairman, at this time I move into evidence House Exhibit 132, which is Judge Hastings' L'Enfant Plaza Hotel valet slip for October 9, 1981.

The **Chairman**. Is there objection to that exhibit?

Mr. **Anderson**. No.

The **Chairman**. Without objection, it is admitted.

[The document referred to was marked House Exhibit No. 132 and was received in evidence.]

Mr. Bryant. Agent Bird, I want to hand you what has been marked as House Exhibit 129 and ask you to identify the exhibit?

Mr. Bird. Yes, sir.

This is an FBI surveillance log that was prepared by agents of my office. It is dated October 9, 1981, and it records observations of those agents which took place in the vicinity of Washington National Airport.

Mr. Bryant. OK. What does the surveillance log cover?

Mr. Bird. It covers the activities beginning at 9:50 a.m., and going through that morning, and it ends at 3:45 p.m.

Mr. Bryant. And what individuals does the surveillance log make reference to?

Mr. Bird. Mr. William Borders and Judge Alcee Hastings.

Mr. Bryant. Mr. Chairman, I move House Exhibit 129 into evidence.

The **Chairman.** Is there objection to that exhibit?

Mr. Anderson. No.

The **Chairman.** It will be admitted.

[The document referred to was marked House Exhibit No. 129 and was received in evidence.]

Mr. Bryant. Agent Bird, I would now like to turn to the FBI's investigation of particular events that occurred during the afternoon of October 9, 1981.

First, did the FBI determine whether or not Judge Hastings checked out of the L'Enfant Plaza Hotel that afternoon?

Mr. Bird. Yes, sir. We did.

Mr. Bryant. And did Judge Hastings check out of the hotel on October 9, 1981?

Mr. Bird. No, sir.

Mr. Bryant. Next, Agent Bird, I would like to direct your attention to Judge Hastings' travel plans on October 9, 1981.

Did the FBI investigate Judge Hastings' airline reservations for that day?

Mr. Bird. Yes, sir.

Mr. Bryant. Let me hand you what has been marked as House Exhibit 133 and ask you to identify it for the committee.

Mr. Bird. This is an Eastern Airlines reservation history showing the travel schedule for Alcee Hastings for the period October 2, 1981, through October 12, 1981.

Mr. Bryant. Agent Bird, what travel does Exhibit 133 reflect for Judge Hastings on October 9, 1981?

Mr. Bird. On October 9, 1981, it shows Judge Hastings traveling via Eastern Airlines 130 from—excuse me—from Eastern Airlines 1620 from Tallahassee, Florida to Atlanta, Georgia, and there via Eastern Airlines 130 from Atlanta to Washington National Airport arriving at 10:40 a.m.

Mr. Bryant. This is the flight he took to Washington, DC, on the morning of October the 9th. Is that correct?

Mr. Bird. That's correct.

Mr. Bryant. Does Exhibit 133 also indicate anticipated travel?

Mr. Bird. Yes, sir.

Mr. Bryant. Based on Exhibit 133, when was Judge Hastings scheduled to depart Washington, DC?

Mr. Bird. He was scheduled to depart on October 11, 1981.

Mr. BRYANT. And where was he scheduled to depart to?

Mr. BIRD. He was scheduled to travel from Washington National Airport to Orlando, Florida.

Mr. BRYANT. And what airport was Judge Hastings scheduled to fly from on October 11, 1981?

Mr. BIRD. Washington National.

Mr. BRYANT. Thank you.

Mr. Chairman, we offer Exhibit 133 into evidence.

The CHAIRMAN. Is there objection?

Mr. ANDERSON. No objection.

The CHAIRMAN. It will be admitted.

[The document referred to was marked House Exhibit No. 133 and received in evidence.]

Mr. BRYANT. Agent Bird, during the course of its investigation, did the Government also obtain evidence indicating that Judge Hastings changed his travel plans and did not fly to Orlando, Florida on October 11, 1981?

Mr. BIRD. Yes, sir.

Mr. BRYANT. At this time, Mr. Chairman, I move into evidence a second group of Stipulation Numbers 184, 168, 192, 193, 194, 195, and 183.

The CHAIRMAN. Is there objection?

Mr. ANDERSON. No.

The CHAIRMAN. They will be admitted.

[Stipulation Nos. 184, 168, 192, 193, 194, 195, and 183 were received in evidence.]

Mr. BRYANT. Stipulation Number 184, is that on October 9, 1981, Judge Hastings took a taxi, at a cost of 50 dollars, to Baltimore-Washington International Airport, from the L'Enfant Plaza Hotel in Washington, DC.

Stipulation 168 is that Judge Hastings left the L'Enfant Plaza Hotel for Florida on October 9, 1981, without picking up his suit from the hotel valet service.

Stipulation 192 is that on Friday, October 9, 1981, at 5:30 p.m., Judge Hastings made a reservation to go to Fort Lauderdale, Florida on Delta Airlines flight 237, departing at 6:30 p.m. That flight was scheduled to continue on to Miami from Fort Lauderdale.

Stipulation 193 is that there is a handwritten notation on Judge Hastings' ticket for Delta flight 237 on October 9, 1981, crossing out Fort Lauderdale as his destination and substituting Miami as the final destination.

Stipulation 194 is that on October 9, 1981, Judge Hastings disembarked at Fort Lauderdale from Delta flight 237, which was scheduled to arrive at 8:38 p.m.

Stipulation 195 is that on October 9, 1981, Judge Hastings rented a car when he arrived at the Fort Lauderdale airport.

Stipulation 183 is that on October 9, 1981, Judge Hastings' car was parked at the Miami International Airport.

Mr. Chairman, based on these stipulations, I move into evidence House Exhibit 134, the Delta Airlines passenger history record for Judge Hastings for October 9, 1981, and House Exhibit 135, Judge Hastings' Delta Airlines ticket from BWI, that is Baltimore-Washington International Airport, to Florida, issued on and for October 9, 1981.

The **Chairman**. Is there objection to House Exhibits 134 and 135?

Mr. **Anderson**. No.

The **Chairman**. They will be admitted.

[The documents referred to were marked House Exhibit Nos. 134 and 135 and were received in evidence.]

Mr. **Bryant**. Agent Bird, I would now like to direct your attention to the FBI's investigation of telephone calls made during the afternoon of October 9, 1981.

Did the FBI's investigation reveal calls from the Washington, DC, area that were charged either to Judge Hastings' residence phone or to his mother's residence phone or to Patricia Williams' residence phone?

Mr. **Bird**. Yes, sir. We did.

Mr. **Bryant**. And where in the Washington—from where in the Washington area did these calls originate?

Mr. **Bird**. They originated from Glen Burnie, Maryland.

Mr. **Bryant**. What airport is in Glen Burnie, Maryland?

Mr. **Bird**. Baltimore-Washington International Airport. That is where the calls originated from.

Mr. **Bryant**. Did the calls—say that again.

Mr. **Bird**. That is where the calls originated from.

Mr. **Bryant**. From Baltimore-Washington International Airport?

Mr. **Bird**. Yes, sir.

Mr. **Bryant**. All right. Were there any other documented calls from the Washington, DC, area that were charged to Judge Hastings' residence or chambers to his mother or to Patricia Williams during the afternoon of October 9, 1981?

Mr. **Bird**. No, sir.

Mr. **Bryant**. No other calls?

Mr. **Bird**. No.

Mr. **Bryant**. Mr. Chairman, at this time I move into evidence a third group of stipulations, Stipulations 186 through 191.

The **Chairman**. Is there objection to those stipulations?

Mr. **Anderson**. No.

The **Chairman**. They will be admitted.

[Stipulation Nos. 186, 187, 188, 189, 190, and 191 were received in evidence.]

Mr. **Bryant**. Stipulation 186 is that on October 9, 1981, at 4:37 p.m., Judge Hastings called his mother from a pay telephone at Baltimore-Washington International Airport and spoke for 4 minutes. He placed another call to her at 4:43 p.m, and spoke for 2 minutes.

Stipulation 187 is that on October 9, 1981, at 5:06 p.m., Judge Hastings called Patricia Williams at her home in Lauderhill, Florida from a pay telephone at Baltimore-Washington International Airport and spoke for one minute.

Stipulation 188 is that during the 5:06 p.m. telephone call on October 9, 1981, from the Baltimore-Washington International Airport, Judge Hastings told Patricia Williams to call him back at a different pay telephone.

Stipulation 189 is that when Patricia Williams called Judge Hastings back at 5:07 p.m. on October 9, 1981, at the Baltimore-Washington International Airport, Judge Hastings told her to go outside, find a pay telephone and call him back.

Stipulation 190 is that on October 9, 1981, at 5:22 p.m., Patricia Williams called Judge Hastings at a pay telephone at the Baltimore-Washington International Airport from a pay telephone from a location other than her home in Lauderhill, Florida.

Stipulation 191 is that after Patricia Williams called him at the Baltimore-Washington International Airport at 5:22 p.m., on October 9, 1981, Judge Hastings took her number, moved to another pay telephone in Baltimore-Washington International Airport, and at 5:24 p.m., called Ms. Williams at her pay telephone.

Mr. Chairman, at this time I would like to offer the following exhibits into evidence: House Exhibit 136, the telephone bills for area code 305-486-0733, which is the residence telephone of Mildred Hastings, January 1, 1981, through October 31, 1981; and House Exhibit 137, the telephone bills for area code 305-486-1697, which is the residence telephone of Patricia Williams from January 1, 1979, through October 31, 1981.

The CHAIRMAN. Is there objection to House Exhibits 136 and 137?

Mr. ANDERSON. If I might reserve on specific matters of relevance, there is no objection to their—I am not sure they are all relevant, if we are talking about October 9th, but I would ask you be conditional relevance as to the rest of them.

The CHAIRMAN. We will admit them conditioned upon your ability to challenge the relevance of any part of it in your examination.

[The documents referred to was marked as House Exhibit Nos. 136 and 137 and was received in evidence.]

Mr. BRYANT. Finally, Agent Bird, as part of the FBI investigation of this case, did you investigate the distance from the L'Enfant Plaza Hotel in Washington, DC, to Baltimore-Washington International Airport?

Mr. BIRD. Yes, sir.

Mr. BRYANT. In thé course of your investigation, did you actually drive with another special agent from the L'Enfant Plaza Hotel to Baltimore-Washington International Airport?

Mr. BIRD. Yes, I did.

Mr. BRYANT. And when did you do so?

Mr. BIRD. On February 12, 1982.

Mr. BRYANT. What day of the week was February 12, 1982?

Mr. BIRD. It was a Friday.

Mr. BRYANT. And what day of the week was October 9, 1981?

Mr. BIRD. It was also a Friday.

Mr. BRYANT. Based on your investigation, what is the distance from the L'Enfant Plaza Hotel to the Baltimore-Washington International Airport?

Mr. BIRD. It was 31.9 miles.

Mr. BRYANT. How long did it take you and the other special agent to drive from the L'Enfant Plaza to Baltimore-Washington International Airport?

Mr. BIRD. A little over an hour. I believe an hour and three minutes.

Mr. BRYANT. At what time did you depart the hotel?

Mr. BIRD. We departed the L'Enfant Plaza at 4:07 p.m.

Mr. BRYANT. And what time did you arrive at Baltimore-Washington International?

Mr. BIRD. At 5:10 p.m.

Mr. **Bryant**. What route did you travel?

Mr. **Bird**. We left the hotel and proceeded to Constitution Avenue, made a right on Constitution, we then traveled to Sixth Street, Northwest, and we followed Sixth Street to New York Avenue we made a right on New York Avenue and followed that to the Baltimore-Washington Parkway, which we followed to the Baltimore-Washington Airport exit.

Mr. **Bryant**. And what was the weather like that afternoon?

Mr. **Bird**. It was clear and sunny.

Mr. **Bryant**. Were the weather conditions similar to those of October 9, 1981?

Mr. **Bird**. Yes, they were.

Mr. **Bryant**. In conclusion, Mr. Chairman, I move into evidence Stipulations 182, 267, 266, and 181.

The **Chairman**. Is there objection to those stipulations?

Mr. **Anderson**. No.

The **Chairman**. They will be admitted.

[Stipulation Nos. 182, 267, 266, and 181 were received in evidence.]

Mr. **Bryant**. Stipulation 182 is that Washington National Airport is approximately four miles from the L'Enfant Plaza Hotel.

Stipulation 267 is that on July 20, 1981, Judge Hastings had a reservation on Eastern Airlines flight 197 departing Washington National Airport at 5:30 p.m. for Miami, Florida.

Stipulation 266 is that before departing the L'Enfant Plaza Hotel on October 9, 1981, Judge Hastings did not check about the availability of flights leaving National Airport.

Stipulation 181 is that on October 9, 1981, there was a 4:35 p.m. direct flight to Miami, Florida, leaving from Washington National Airport, with 14 seats available.

Mr. Chairman, based on these stipulations, I move into evidence House Exhibit 138, an Eastern Airlines time table effective October 1, 1981.

Mr. **Anderson**. Relevance, Mr. Chairman, but other than that——

The **Chairman**. Let me just ask counsel what is in this exhibit that the House believes is relevant to the case that is not in any of the other exhibits that have already been taken into evidence?

Mr. **Bryant**. Mr. Chairman, this is how we prove when the 4:35 flight was scheduled, because apparently there was a change somewhere, and this airline schedule shows that it was scheduled at that time.

Mr. **Anderson**. May I respond?

The **Chairman**. Mr. Anderson.

Mr. **Anderson**. I am very vulnerable to airline reservation changes. The question, I take it, if it is relevant at all it is not that there was a flight, but that Judge Hastings should have known about it or that there should have been some information.

They are offering that there was a recent change shortly prior to October 9th in evidence to show a flight. There will be a prejudicial spillover from that inference.

I truly do not see the relevance to this, absent a showing somehow this schedule had somehow been placed in Judge Hastings' hand or otherwise communicated to him.

Secondly, it shows flights to Miami. Judge Hastings went to his home in Fort Lauderdale.

The **Chairman**. Representative Bryant, would it be possible to just—if the purpose for the exhibit is to establish that a flight left at a certain time, would it be possible to just prepare a stipulation of that?

Mr. **Bryant**. Mr. Chairman, apparently there is a stipulation, but the problem is for the House that the committee has said that he could submit any documentation he chose to submit to argue against that stipulation. So we are left with the necessity of offering this schedule into evidence in order to show when the flight left. I would argue also——

The **Chairman**. If the purpose of this exhibit is to prove when the flight left—and we already have a stipulation as to that effect—then I would not admit it into evidence at this time.

If at a future time you see a need to have it admitted to contradict something that is already in evidence or is being suggested, then we will certainly reconsider that. But at this time, I cannot see the—I cannot see what it adds to the case.

Mr. **Anderson**. Mr. Chairman, as between the stipulation and the schedule, my objection to both are relevance, and so I don't—if the chair's ruling is that the fact is a fact of consequence, I do not care whether it is proved by stipulation or by document.

The **Chairman**. Well, my only—as I understand your representation, counsel, it is that the fact of the time of this flight leaving is already in the record by virtue of stipulation. Is that correct?

Mr. **Bryant**. That is correct.

The **Chairman**. So, if this exhibit is offered for that same purpose, its admission would be denied at this point.

Mr. **Bryant**. Mr. Chairman, might we be assured of the opportunity to offer it again in the event the respondent comes forward with some type of evidence which is designed to argue against that stipulation?

The **Chairman**. You certainly can. There is no problem with that. We are glad to have that.

Is there cross-examination of this or did you have additional questions for this witness?

Mr. **Bryant**. No, no further questions at this time.

The **Chairman**. Is there cross-examination?

CROSS-EXAMINATION

Mr. **Anderson**. Yes, Mr. Chairman.

[Pause.]

Mr. **Anderson**. Agent Bird, do you still have House Exhibit 129? If I—could I ask if 129 and House Exhibit 66 could be placed before the agent?

A clarification point: In your surveillance log of the morning, the final entry on the last page—I am sorry—the entry for 11:53 a.m., it is about four pages in, am I reading that correctly that is a report that agents observed Mr. Borders and Judge Hastings while they were at the rear of the 1621 New Hampshire Avenue address?

Mr. **Bird**. Yes, sir. That is correct.

Mr. Anderson. They were under surveillance at that point and they were at the rear of the building?

Mr. Bird. Yes, sir. That is correct.

Mr. Anderson. But there is no indication in those logs that Judge Hastings was ever observed leaving the building by the rear entrance?

Mr. Bird. No, sir.

Mr. Anderson. Thank you.

Now, if we could move to House Exhibit Number 66. This I think is the, what I think you call the arrest log, Agent Bird, is that correct?

Mr. Bird. Yes, sir. That is correct.

Mr. Anderson. And you are one of the participants in—you were at the scene and you have initialed this document?

Mr. Bird. Yes, sir.

Mr. Anderson. And you are familiar with the events.

Mr. Bird. Yes, sir.

Now, am I correct, Agent Bird, that room 103 at the Twin Bridges Marriott had been prepared so the events that occurred there could be recorded on video and audio tape?

Mr. Bird. Yes, sir.

Mr. Anderson. That was prior to the arrival of Mr. Borders?

Mr. Bird. That is correct.

Mr. Anderson. Am I correct that following his arrest, Mr. Borders was brought into the room at 12:53 p.m.?

Mr. Bird. I believe that is correct. Let me check the log.

Yes. That is correct.

Mr. Anderson. And am I correct that at 1:06 p.m., Agent Amaroso read Mr. Borders his rights?

Mr. Bird. At 1:06 p.m., Agent Murphy advised Borders of his rights.

Mr. Anderson. Mr. Chairman, I note that—and I do not want to make a point about it, but if I could see it—the copy of the exhibit submitted to me as House 66, I think was the typed script copy, rather than the handwritten, and I just do not want to get confused with Agent Bird if I am reading something that is different than his.

Does your entry for 1:06——

The Chairman. Are you asking that we have a——

Mr. Anderson. I am asking what I thought was—House Exhibit 66 from my standpoint appears not to have been. I am just really asking counsel for a correction. Should I be looking at the handwritten or the typed written?

Let me continue.

In any event, at 1:06 he was read his rights, is that correct?

Mr. Bird. Yes, sir.

Mr. Anderson. And at 1:07, Mr. Borders was advised he understood his rights and he signed a waiver of rights?

Mr. Bird. Yes, sir. That is correct.

Mr. Anderson. Is that correct?

Mr. Bird. Yes.

Mr. Anderson. And Mr. Borders was not escorted from room 103 until 1:56 p.m. Is that correct, sir?

Mr. Bird. Yes, sir. That is correct.

Mr. **Anderson**. Were the proceedings that occurred in room 103 during the 1 hour and 6 minutes that Borders remained at the motel recorded by video or audio tape?

Mr. **Bird**. No, sir.

Mr. **Anderson**. Was any portion of those proceedings recorded on video or audio tape?

Mr. **Bird**. No, sir.

Mr. **Anderson**. Agent Bird, if you know, why were they not recorded on video or audio tape?

Mr. **Bird**. That is not our procedure. We have in my experience never done that, and it was nothing—it was never discussed.

Mr. **Anderson**. And, Agent Bird, as I have recently been asked, why should not Judge Hastings and indeed this committee infer that those tapes were not made or preserved because the FBI may have made representations to induce Mr. Borders' cooperation that were inappropriate?

Mr. **Bird**. I am sorry, I—could you repeat your question? I am not sure what you are asking.

Mr. **Anderson**. Let me state the ultimate question: There was 1 hour and 6 minutes there, which might have been the one time when remarks by Williams Borders after he signed his waiver of rights could have been captured. Why should not this committee, Judge Hastings, and indeed the world, draw the inference that those tapes were not made or preserved because Borders may have made statements that would have exculpated that man?

Mr. **Bird**. I cannot answer that question. I do not know.

Mr. **Anderson**. Agent Bird, I cannot either, and I thank you for coming.

Mr. **Bird**. All right.

The **Chairman**. Is there redirect?

[No response.]

The **Chairman**. I have no questions of this witness.

Senator Specter, do you have questions?

EXAMINATION BY THE COMMITTEE

The **Vice Chairman**. Do you know what occurred with Mr. Borders during the times that he was in custody before his attorney arrived and after his attorney arrived?

Mr. **Bird**. Yes, sir. I do.

The **Vice Chairman**. What did occur?

Mr. **Bird**. Initially, after he was advised of his rights, Agent Amoroso, Agent Murphy, Foster, and myself, played tapes for Mr. Borders, taped conversations. I believe that lasted about 10, 10 or 15 minutes.

The **Vice Chairman**. Well, his attorney did not arrive for about 25 minutes after he was taken into custody.

Mr. **Bird**. That is correct. It was——

The **Vice Chairman**. Why was he not questioned during that interval?

Mr. **Bird**. We were playing the tapes to him. At the end of the tape playing session, he requested that he be allowed to call his attorney.

The **Vice Chairman**. Well, had he declined to answer questions? Had he asserted his privilege against self-incrimination?

Mr. **Bird**. He had signed a waiver stating that he was aware of these rights. I don't know that we asked him any questions. He certainly did not answer anything. He did not say anything and he was never—it never came up.

The **Vice Chairman**. Well, my question is, did he decline to answer questions?

Mr. **Bird**. Not that I recall, not at that point.

The **Vice Chairman**. Well, I asked Special Agent Murphy that, but there was a protracted period before his attorney arrived. Now, it may be that he declined to answer any questions, but that is unclear on the face of this record. And my question to you is, do you know if he in fact declined to answer questions?

Mr. **Bird**. No. I do not know that. I do not know that he was asked that question.

The **Vice Chairman**. Well, was there any reason why he was not questioned immediately before being shown the tape? I can see that the tape would be of assistance in inducing him to answer questions if he was not disposed to do so, or I can understand if he said, "I decline to answer questions, as is my right," after having been given the *Miranda warnings*. But what I am seeking to find out is whether he asserted his privilege against self-incrimination and refused to answer questions.

Mr. **Bird**. I do not recall that he did.

The **Vice Chairman**. OK. Thank you.

The **Chairman**. Are there other questions from the committee?

[No response.]

The **Chairman**. If not, is there any reason this witness should not be excused?

[No response.]

The **Chairman**. Then this witness is excused and the House will please call your next witness.

Mr. **Bryant**. The House calls Wendy Loucks to be examined by Mr. Gekas.

The **Chairman**. Would you please raise your right hand?

Do you, Wendy Loucks, swear and affirm that the evidence you shall give in the case now pending between the United States and Judge Alcee L. Hastings shall be the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. **Loucks**. I do.

The **Chairman**. Would you please be seated.

TESTIMONY OF WENDY LOUCKS

DIRECT EXAMINATION

Mr. **Gekas**. Mr. Chairman, members of the committee.

Please state your full name.

Ms. **Loucks**. Wendy R. Loucks.

Mr. **Gekas**. And what is your occupation?

Ms. **Loucks**. I am a special agent with the Federal Bureau of Investigation in Miami.

Mr. **Gekas**. How long have you been so occupied?

Ms. **Loucks**. Nine-and-a-half years.

Mr. GEKAS. And how long have you performed your duties in the Miami area?

Ms. LOUCKS. Approximately eight-and-a-half years.

Mr. GEKAS. And before that, what was your background?

Ms. LOUCKS. I am an attorney. I graduated from the University of Nebraska College of Law, and I was practicing for about a year, year and a half before I came into the FBI.

Mr. GEKAS. All right. And when did you go to the Miami office?

Ms. LOUCKS. In January 1981.

The VICE CHAIRMAN. Would you bring the microphone closer to you, please?

Ms. LOUCKS. January 1981.

Mr. GEKAS. So that we take it that in the fall of 1981 you were still or were attached to the Miami office?

Ms. LOUCKS. Yes.

Mr. GEKAS. On October 9, 1981, which has become an important date in these proceedings, tell the chairman and the members of the committee what assignment you received?

Ms. LOUCKS. I was assigned to work with another agent by the name of Lawrence Harrigan, to interview Patricia Williams.

Mr. GEKAS. As a result of the receipt of that assignment, what did you do?

Ms. LOUCKS. Agent Harrigan and I left the Miami FBI office and went downtown where Patricia Williams' office is located, and we went in and contacted her receptionist and asked to speak to her.

Mr. GEKAS. All right. What time about did you arrive at the Williams' office?

Ms. LOUCKS. To the best of my recollection, it was shortly before 3:00 p.m.

Mr. GEKAS. What happened then when you arrived at the premises?

Ms. LOUCKS. The receptionist asked what it was we wished to speak to Ms. Williams about, and we told her that it was a personal matter. She then went back and got Ms. Williams from an interior office and brought her out. We briefly explained the nature of the interview and Ms. Williams agreed to the interview and requested that we talk to her in private, and we therefore left the interior offices and went down a hallway to what was apparently a conference room or a library area, and the interview was conducted there.

Mr. GEKAS. At what time did the interview begin, to the best of your recollection?

Ms. LOUCKS. It would have been just momentarily after that, probably 3:00 o'clock.

Mr. GEKAS. And how long did it last?

Ms. LOUCKS. About 40 minutes.

Mr. GEKAS. All right. Then, if we are talking about a beginning time of at or near 3:00, and about a 45 minute lasting of the interview, what time then would you put on the record as the approximate time that the interview was concluded?

Ms. LOUCKS. Approximately 3:40 to 3:45 p.m.

Mr. GEKAS. What were the specific subjects that you discussed with Ms. Williams as part of your preliminary questions and the interview?

Ms. Loucks. We were mainly interested in what her relationship was with Judge Hastings. We had been advised that she was dating Judge Hastings, and we also wanted to ask her questions about what she knew regarding his finances.

Mr. Gekas. Throughout the course of the interview, which you testified lasted about 45 minutes, was that interview uninterrupted or was it interrupted?

Ms. Loucks. No, it was interrupted once.

Mr. Gekas. Tell the committee how that occurred and how the interruption occurred?

Ms. Loucks. Approximately 20 minutes into the interview, there was a knock on the door of this conference room where the interview was taking place, and the receptionist or the woman who had initially greeted us when we entered the office, was outside the door, and I believe Patricia asked, "Who is it?" And this woman responded with her name, and Patricia said, "Come in" or "Yes," and the woman opened the door and told Patricia that she had a telephone call from a client. And Patricia did not want to take the call and the secretary or the receptionist explained that the man wanted to talk to her regarding an upcoming hearing, so Patricia excused herself and left, took the call, and came back after a couple of minutes.

Mr. Gekas. When the receptionist appeared at the scene of the conference room, did the receptionist mention a name of the caller?

Ms. Loucks. Yes, she did.

Mr. Gekas. Do you remember that name?

Ms. Loucks. No, I do not.

Mr. Gekas. Do you remember whether that name was Judge Hastings?

Ms. Loucks. No, it was not Judge Hastings.

Mr. Gekas. All right. You stated that Ms. Williams returned rather promptly from the business of the client back to the conference room. Would you estimate that time that elapsed?

Ms. Loucks. It was no more than five minutes and may have been as short as 2 minutes.

Mr. Gekas. Were there any other telephone calls during that interview or any other interruptions?

Ms. Loucks. No.

Mr. Gekas. When she returned to the conference room, did you observe the demeanor of Ms. Williams?

Ms. Loucks. Yes.

Mr. Gekas. How would you describe it?

Ms. Loucks. It had not changed from the initial portion of the interview.

Mr. Gekas. All right.

At this time, Mr. Chairman, members of the committee, we would like to move into evidence Stipulation Number 151.

The **Chairman.** Is there objection to the introduction of that stipulation?

Mr. Anderson. No.

The **Chairman.** It will be received.

[Stipulation No. 151 was received in evidence.]

Mr. Gekas. We would read it into the record.

In October 1981, Patricia Williams was an attorney employed by the Equal Employment Opportunity Commission in Miami, Florida, and the fiance of Judge Hastings. She resided at 2401 Northwest 43rd Terrace, Lauderhill, Florida.

Mr. Chairman and the committee, that concludes the testimony of Wendy Loucks.

The CHAIRMAN. Is there cross-examination of this witness?

CROSS-EXAMINATION

Ms. WILLIAMS. Very briefly.

Special Agent Loucks, is it?

Ms. LOUCKS. Loucks.

Ms. WILLIAMS. Is it all right if I call you Wendy, you calling me Patricia?

Ms. LOUCKS. Yes. That is fine.

Ms. WILLIAMS. On the afternoon that you interviewed me at EEOC, when I walked into the room, what is the first thing that you said, do you recall?

Ms. LOUCKS. No, I do not.

Ms. WILLIAMS. I do. Did you not say, "That is the woman that accompanied Judge Hastings to the Fontainebleau Hotel on September 16"?

Ms. LOUCKS. No.

Ms. WILLIAMS. You did not say that?

Ms. LOUCKS. No.

Ms. WILLIAMS. After the——

Senator LEAHY. Mr. Chairman——

The CHAIRMAN. Yes, Senator Leahy.

Senator LEAHY. Mr. Chairman, I have just got a question. Is counsel testifying or asking questions here? If counsel is going to testify, then I would suggest that counsel be under oath to testify.

The CHAIRMAN. I believe counsel is engaged in cross-examination at this point.

Senator LEAHY. Fine. If it is cross-examination, that is one thing. But if we reach a point where it is going to be testimony, then I would—no matter who it is—I would strongly urge that we have counsel under oath.

The CHAIRMAN. Counsel can proceed.

Ms. WILLIAMS. Thank you.

You indicated that there was an interruption for a telephone call.

Ms. LOUCKS. Yes.

Ms. WILLIAMS. How far into the interview did that telephone call come?

Ms. LOUCKS. Approximately 20 minutes, to the best of my recollection. It may have been 15 minutes.

Ms. WILLIAMS. And you said it lasted somewhere between 2 to 5 minutes.

Ms. LOUCKS. Yes.

Ms. WILLIAMS. Did you verify with the receptionist after the interview, or anytime subsequent to the interview, as to who the call, who called me?

Ms. LOUCKS. No. She had stated the name when she came to the door.

Ms. WILLIAMS. Did you indicate that she spoke through the door or did she enter the room or what?

Ms. LOUCKS. She opened the door in response to you saying, "Come in" or "Who is it?" But she did not physically enter the room. She stood there at the doorway.

Ms. WILLIAMS. Is this the same receptionist with whom you spoke when you arrived and identified yourself as FBI agents there on business with me?

Ms. LOUCKS. To the best of my recollection, it was the woman that we spoke with.

Ms. WILLIAMS. And your testimony is that she interrupted this business because I had a call from a client?

Ms. LOUCKS. Yes.

Ms. WILLIAMS. Were you one of the agents who surveiled the September 16 Fontainebleau experience?

Ms. LOUCKS. Yes.

Ms. WILLIAMS. You were there with another agent, is that correct?

Ms. LOUCKS. Yes.

Ms. WILLIAMS. And you two were seated in the Fontainebleau for dinner?

Ms. LOUCKS. Yes.

Ms. WILLIAMS. Were you seated at a table for two?

Ms. LOUCKS. It was a round table, and it was a cushion, so I am not sure exactly how many people it could have held. It probably could have held four people. But there were place settings—there may have been place settings for more than two at the table.

Ms. WILLIAMS. You do not recall, though, specifically?

Ms. LOUCKS. I do not recall whether they removed them, but there were only two of us at that table.

Ms. WILLIAMS. Do you recall whether or not there were tables for two at all at the restaurant on that evening?

Ms. LOUCKS. No, I do not recall. I did not specifically look at the tables.

Ms. WILLIAMS. You do not recall.

At some point on that evening, you surveiled the judge leave his guest, is that correct, and go somewhere else?

Ms. LOUCKS. Yes.

Ms. WILLIAMS. That was just before entering into the dining room, is that correct?

Ms. LOUCKS. Yes.

Ms. WILLIAMS. And do you know where the judge went?

Ms. LOUCKS. No. I was under the impression at the time that it was a restroom that he had gone to, but apparently that was not correct, because when I looked at the diagram, there was not a restroom in that alcove area.

Ms. WILLIAMS. And what was the name of the restaurant in which the judge dined on that evening?

Ms. LOUCKS. I do not recall. I would recognize the name now, but I do not remember what it was.

Ms. WILLIAMS. Was it The Galleries Restaurant?

Ms. LOUCKS. Yes.

Ms. WILLIAMS. Was there more than one restaurant in the Fontainebleau?

Ms. LOUCKS. I believe that I had heard that there was.

Ms. WILLIAMS. You do not know?

Ms. LOUCKS. I do not know. I had never been in there prior to that.

Ms. WILLIAMS. But you have been in there since that time, is that correct?

Ms. LOUCKS. Yes.

Ms. WILLIAMS. And that is when you realized that the judge had not gone to the restroom, as you testified earlier, because the restroom was located such that he could not have gone there, is that correct?

Ms. LOUCKS. No, that is not when I realized it.

I realized sometime later on, I think when I looked at a diagram of the layout, that that was not a restroom.

Ms. WILLIAMS. When was it that you paid the second visit to the Fontainebleau Hotel?

Ms. LOUCKS. It was probably in 1985.

Ms. WILLIAMS. Was that in preparation for your testimony before the Investigating Committee?

Ms. LOUCKS. Yes.

Ms. WILLIAMS. Now, approximately, how many people were in that restaurant on that evening? Was it crowded? Was it busy?

Ms. LOUCKS. No, it wasn't crowded.

Ms. WILLIAMS. Was it sparsely populated?

Ms. LOUCKS. Yes.

Ms. WILLIAMS. So anybody could have walked into the restaurant and glanced around quickly and basically seen who was there?

Ms. LOUCKS. Yes.

Ms. WILLIAMS. But you don't know whether or not that was the case in the other dining halls in the Fontainebleau on that evening?

Ms. LOUCKS. No.

Ms. WILLIAMS. Because you never went into them?

Ms. LOUCKS. Right.

Ms. WILLIAMS. Isn't it a fact that when you came to my offices at EEOC you posed numerous questions regarding whether or not the judge owned a yacht? Whether or not the judge—is that correct?

Ms. LOUCKS. I don't recall that. I don't recall that I was doing most of the questioning. I believe it was Mr. Harrigan.

Ms. WILLIAMS. Your notes don't reflect what we talked about?

Ms. LOUCKS. I don't recall any questions about a yacht, about him owning a yacht. We may have asked if he owned a boat.

Ms. WILLIAMS. What about a summer home?

Ms. LOUCKS. Possibly.

Ms. WILLIAMS. What about expensive jewelry?

Ms. LOUCKS. I recall asking you about expensive jewelry. I don't recall asking you about Judge Hastings' jewelry.

Ms. WILLIAMS. Well, did you ask me if he gave me expensive jewelry?

Ms. LOUCKS. Yes.

Ms. WILLIAMS. Essentially, you asked me lots of questions about the judge and money; is that correct?

Ms. LOUCKS. Yes.

Ms. WILLIAMS. And I answered no to all of those questions, didn't I?

Ms. LOUCKS. Well, without knowing what the question is, I can't say what your answer was.

Ms. WILLIAMS. At some point during the interview did I just not outright laugh—that you must be talking about a different Judge Alcee Hastings?

Ms. LOUCKS. Yes.

Ms. WILLIAMS. At the Fontainebleau—and I am moving from place to place fairly quickly—from the point at which you were seated, did you have a clear view of Judge Hastings? Could you see him clearly from where you were seated?

Ms. LOUCKS. Inside the dining room?

Ms. WILLIAMS. Inside the dining room.

Ms. LOUCKS. I did not. My view was partially obstructed by a high-backed chair, so I had to move around in order to continue to see him.

Ms. WILLIAMS. Did you have a clear view of the person he was with?

Ms. LOUCKS. No. It also was partially obstructed by that same chair.

Ms. WILLIAMS. I see. All right. Thank you.

Did you testify that at some point the judge walked around the Galleries Restaurant, around the Fontainebleau Hotel?

Ms. LOUCKS. That he walked around?

Ms. WILLIAMS. Um-hum. That he got up and walked around.

Ms. LOUCKS. He got up and walked out, not walked around in the dining room.

Ms. WILLIAMS. All right. Just got up from his table and walked out?

Ms. LOUCKS. Yes.

Ms. WILLIAMS. Do you know where he went?

Ms. LOUCKS. No.

Ms. WILLIAMS. Thank you. I have nothing further.

The CHAIRMAN. Is there redirect examination of this witness?

Mr. GEKAS. No further questions.

The CHAIRMAN. I have no questions. Do any members of the committee have questions?

[No response.]

The CHAIRMAN. Is there any reason this witness cannot be excused?

Senator BRYAN. Mr. Chairman, I had just one question.

The CHAIRMAN. Excuse me. I did not see you. Senator Bryan?

EXAMINATION BY THE COMMITTEE

Senator BRYAN. And I missed it. The witness testified to it. But would you give us the time frame again in which the interview occurred with respect to Ms. Williams?

Ms. LOUCKS. Um-hum. To the best of my recollection, we got there approximately five minutes to three, and would have started the interview about three o'clock. And it lasted approximately 40 to 45 minutes, so we would have left approximately 3:40 to 3:45.

Senator **Bryan**. Thank you very much, Mr. Chairman.

The **Chairman**. This witness will be excused. Thank you very much for your testimony.

The House will please call its next witness.

Mr. **Bryant**. The House calls John Simmons.

The **Chairman**. Do you, John Simmons, swear and affirm that the evidence you shall give in the case now pending between the United States and Judge Alcee L. Hastings shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. **Simmons**. I do.

The **Chairman**. Please be seated.

Mr. **Gekas**. Mr. Chairman, members of the committee—please state your full name.

Mr. **Simmons**. John J. Simmons, Jr.

TESTIMONY OF JOHN J. SIMMONS, JR.

DIRECT EXAMINATION

Mr. **Gekas**. And what is your occupation?

Mr. **Simmons**. I am a special agent with the FBI.

Mr. **Gekas**. How long have you been so occupied?

Mr. **Simmons**. Approximately twenty years.

Mr. **Gekas**. Where are you presently assigned?

Mr. **Simmons**. Atlanta, Georgia.

Mr. **Gekas**. How long have you been situated in the Atlanta office?

Mr. **Simmons**. Approximately 2½ years.

Mr. **Gekas**. Before that where were you on duty?

Mr. **Simmons**. I was assigned to the Miami Division, Fort Lauderdale RA—Resident Agency.

Mr. **Gekas**. How far back does that stretch, that duty?

Mr. **Simmons**. I was there from 1980 to 1987.

Mr. **Gekas**. So that in October 1981 that is the assignment that you carried on in the Fort Lauderdale Field Office of the FBI, is that correct?

Mr. **Simmons**. That is correct.

Mr. **Gekas**. Focusing your attention on October 9, 1981, please tell the chairman and the committee what assignment you received on that date.

Mr. **Simmons**. I was assigned to go to Judge Hastings' chambers and conduct an interview of the courtroom clerk, named Marilyn Chambers, and to serve a subpoena on Judge Hastings' staff for documentary records, and I was also in charge of the other agents that were doing simultaneous interviews.

Mr. **Gekas**. What time did you receive this assignment?

Mr. **Simmons**. It was approximately 2:15 p.m.

Mr. **Gekas**. How many agents did you take with you or assign with you to conduct this part of the proceedings?

Mr. **Simmons**. Give or take it was about ten agents. There were about ten agents there.

Mr. **Gekas**. What had occurred in Washington as far as you knew that prompted the assignment that you received?

Mr. **Simmons**. William Borders had been arrested.

Mr. **Gekas**. All right. After you received the assignment and garnered your fellow agents, what did you proceed to do with them?

Mr. **Simmons**. We traveled to the Federal Courthouse in Miami and went to Judge Hastings' chambers.

Mr. **Gekas**. About what time did you arrive on that date?

Mr. **Simmons**. It was approximately 2:50 p.m.

Mr. **Gekas**. How do you know the time that you arrived?

Mr. **Simmons**. I later made a memorandum of the events of that afternoon and I had recalled at that time when I had arrived, and I have since reviewed that memorandum.

Mr. **Gekas**. All right. I have in hand an exhibit marked as House Exhibit 139, and I ask you to identify that.

What is that exhibit?

Mr. **Simmons**. This is the memorandum I prepared on November 25, 1981.

Mr. **Gekas**. Mr. Chairman, I move House Exhibit 139 into evidence.

The **Chairman**. Is there objection?

Mr. **Anderson**. No objection.

The **Chairman**. It will be admitted into evidence.

[The document referred to was marked House Exhibit No. 139 and was received in evidence.]

Mr. **Gekas**. We will let it rest there until we finish with that.

When you arrived at Judge Hastings' chamber, what did you do specifically with respect to the personnel that you encountered there?

Mr. **Simmons**. We initially identified ourselves as FBI agents and that we were conducting an investigation involving Judge Hastings, and that we wished to interview the members of the staff that were there as well as—at some point, I am not sure I did this immediately, but some time after we arrived we advised that we also had a subpoena *duces tecum* for records, which was served on one of the staff members there.

Mr. **Gekas**. What next did you do?

Mr. **Simmons**. We advised them that we did not want to disrupt the normal operation of the office and that we needed to interview everybody as soon as possible and we preferred to do it outside of the area where the public had access. So individually the agents assigned to specific members of the judge's staff located those individuals and went off to side rooms to conduct interviews, myself included.

Mr. **Gekas**. When you went there in the first place, how many staff people did you expect to find?

Mr. **Simmons**. I believe we expected six or seven, I am not sure. It was right around six or seven.

Mr. **Gekas**. When you did arrive, how many did you actually confront?

Mr. **Simmons**. I believe it was four.

Mr. **Gekas**. What did you determine with respect to the other two?

Mr. **Simmons**. We determined the other two individuals were up in the Fort Lauderdale office that Judge Hastings maintained.

Mr. **Gekas**. What did you do with respect to those two missing personnel, or those absent from the Miami chambers?

Mr. SIMMONS. Two of the agents that were with us—in fact, it was Gary Aldrich and Ken Cameron—left almost immediately after we arrived at Judge Hastings' chambers and traveled to Fort Lauderdale to locate those two staff members.

Mr. GEKAS. How far, in terms of miles, is the one office, the chambers in Miami, from the Fort Lauderdale site?

Mr. SIMMONS. Approximately 25 miles.

Mr. GEKAS. Had you ever traveled that distance yourself by automobile?

Mr. SIMMONS. Many, many times.

Mr. GEKAS. Tell the chairman and the committee the travel time in a normal day?

Mr. SIMMONS. Well, under normal circumstances it is about a half-an-hour ride. On a Friday afternoon, this would have been 3:00–3:15 p.m., weekend and rush hour traffic is beginning and it is closer to an hour drive. It is on Interstate 95, which is a very heavily traveled road at that time.

Mr. GEKAS. Back to the Miami chambers. What was the total amount of time that elapsed between the initial entry into the chambers and the completion of the various interviews?

Mr. SIMMONS. Approximately 2½ hours.

Mr. GEKAS. All right. The memorandum that has been marked and entered into evidence was written by you; is that correct?

Mr. SIMMONS. That is correct.

Mr. GEKAS. Tell the chairman and the members why you wrote that memorandum?

Mr. SIMMONS. Well, it was a combination of things. Primarily, there had been allegations made by Judge Hastings, it was either Judge Hastings or his staff, of misconduct on the part of myself and the other agents that had arrived at his chambers, and figuring that we would be held culpable for our actions that day, or responsible certainly for our actions, we decided while it was still fresh in our minds, particularly in my mind, to record everything that happened in chronological order. So that should it come back and it be necessary for me to testify or whatever regarding the events of that day I would have something on record I could refer to.

Mr. GEKAS. What is the date of that memorandum?

Mr. SIMMONS. November 25, 1981.

Mr. GEKAS. All right. In a general fashion, will you tell the chairman and the committee how the agents under your command, as it were, conducted themselves during the course of the interviews and the service of the subpoena?

Mr. SIMMONS. Well, nothing less than professional. We were all very well aware that we were dealing with the staff of a Federal judge within our own district where we would eventually be trying cases, and we certainly followed our procedures to the letter wherever possible. I think every agent was as courteous as he could possibly be. You know, we tried to minimally disrupt the activities of the office.

Mr. GEKAS. All right. When you concluded the interviews in the chambers of the judge and the service of the subpoena, what did you next do, yourself personally and the other agents?

Mr. **Simmons**. As each agent finished his interview, if he had no further assignment I sent them back to the Miami office. Once I had gathered or had been given the material and documents that we needed according to the subpoena request we, myself and the—I believe it was Agent Joseph Usher, another agent working with me, left and returned to the Miami office.

At that time we secured the documents and thereafter I traveled home.

Mr. **Gekas**. What happened after you reached your residence?

Mr. **Simmons**. At approximately 8:30, 9:00, 9:30, in that time frame, I received a call from the Special Agent in charge of the Miami Division, Joe Corliss, and he advised me that as of that time Judge Hastings had not been located in the Washington, DC area for the purposes of an interview. And he asked me—he asked me to locate another mature agent, which I did, which was my partner, to attempt to find Judge Hastings in the Fort Lauderdale area.

Both myself and my partner were agents that worked in that division, in that territory, and we had known where Judge Hastings' mother had lived from a prior surveillance. So Agent Harrigan and I at some point in time after that, approximately probably 10:30, 10 or 10:30, left to try and locate Judge Hastings.

We traveled to Judge Hastings' mother's residence first.

Mr. **Gekas**. Would you identify fully the co-agent, the one whom you contacted?

Mr. **Simmons**. Yes. That was Lawrence K. Harrigan.

Mr. **Gekas**. Mr. Chairman, at this time I would like to move into evidence the Stipulation 198.

The **Chairman**. Is there objection to that stipulation?

Judge **Hastings**. No objections, Mr. Chairman.

[Stipulation No. 198 was received in evidence.]

Mr. **Gekas**. Stipulation 198 reads as follows: On October 9, 1981, Mildred Hastings lived with her son, Alcee L. Hastings, at 2970 N.W. 55th Avenue, Apt. 1-B, Lauderhill, Florida. Two telephone numbers were provided to that residence. Telephone Number (305) 486-0733 belonged to Mildred Hastings, and telephone number (305) 731-8176 was used by Judge Hastings.

Now, you stated that you went as a result of your assignment to that Hastings residence. What time did you arrive, approximately?

Mr. **Simmons**. It was approximately 11 p.m.

Mr. **Gekas**. What happened when you got there?

Mr. **Simmons**. Well, we cleared the security gate, we identified ourselves and advised that we had official business inside of the apartment complex, and we then traveled to Mrs. Hastings 'residence, we knocked on the front door initially and nobody answered. But we could tell that there was someone inside because the TV was on and we could see movement inside through one of the sliding glass windows.

So we went to the area of the sliding glass window and we knocked on the window. At this point someone stood up. Later we determined that it was a male who went to the door and admitted us.

This individual advised us, I believe, that he was Judge Hastings' uncle, if I am not mistaken.

Mr. **Gekas**. All right. Did you talk with Mrs. Hastings?

Mr. SIMMONS. Yes. We entered, we identified ourselves as Special Agents of the FBI, and we asked her if she had seen Judge Hastings, her son, and she said no she hadn't. And while we were asking her these questions, the matter of this investigation came on the news, right in front of us all. I am not sure exactly who said what but we all referred to the fact that what was occurring on the news was part of the purpose that we were there to interview the judge.

Mr. GEKAS. What did you ask her further about contacts between her and her son?

Mr. SIMMONS. We asked her had she seen her son and she replied no, and then we also asked her if she had heard from her son and she said no.

Mr. GEKAS. All right. What did you then request of Mrs. Hastings?

Mr. SIMMONS. At that point we advised her that we needed to speak to him as soon as possible, and we asked her if she heard from him or saw him to have him contact the Miami office of the FBI, and she said she would do that.

Mr. GEKAS. How would you describe to the chairman and the members of the committee the demeanor of the uncle and the judge's mother before, during and as you were departing from the interviews?

Mr. SIMMONS. Well, they were very, very concerned. They seemed very tense, as if—well, for obvious reasons. They realized that this was not, I would say, a friendly visit, it was an official investigation. Basically, their demeanor was kind of a nervous, tense state. They were cordial to us but a little nervous.

Mr. GEKAS. All right. What did you do next?

Mr. SIMMONS. Well, next, we understood that Judge Hastings' fiancee lived in the Fort Lauderdale area, an attorney by the name of Patricia Williams. My partner had interviewed her that afternoon with Wendy Loucks, and we decided to try there, to see if the judge was there.

We obtained her address and then we traveled over there. It was approximately midnight that we arrived.

Mr. GEKAS. And whom did you find?

Mr. SIMMONS. Well, we knocked on the door. Patricia Williams opened the door, and standing behind her towards the back of the house I could see Judge Hastings.

Mr. GEKAS. What did the judge say to you?

Mr. SIMMONS. He invited us in. He said, "Gentlemen, I've been expecting you. Come on in." And we entered.

Mr. GEKAS. What did you proceed to do?

Mr. SIMMONS. We, even though the judge knew who we were, we identified ourselves, and we advised him that we were there to interview him. And he ushered us into a back room in the house, which was kind of a family-room type of room, and we proceeded with the interview.

We advised him of his rights and the judge indicated he understood.

Mr. GEKAS. Up to that time, had you had any information at all, from the time that you received the assignment in the early afternoon until that point at midnight, that Judge Hastings had contacted the FBI at all?

Mr. SIMMONS. No. I had not been told that, and I am sure I would have been had he.

Mr. GEKAS. All right. What was the nature of the questions and content of the questions that you asked Judge Hastings about Washington and the whole affair?

Mr. SIMMONS. Primarily, we asked him about his actions and his movements throughout the day of October 9th up until the time he arrived in Fort Lauderdale.

Mr. GEKAS. How would you describe his demeanor as he was responding to you?

Mr. SIMMONS. Very relaxed. He was extremely relaxed.

Mr. GEKAS. Did you ask him any questions concerning the court matters that preceded this arrest of Borders?

Mr. SIMMONS. Yes, we did. We did go into that.

Mr. GEKAS. What did you ask him?

Mr. SIMMONS. Well, we asked him about the circumstances surrounding the *Romano* order and whether or not there was anything unusual or abnormal about the way the order was handled, and the basic procedures involved in it.

Mr. GEKAS. All right. How would you describe his attitude and conduct concerning William Borders and your commentary about William Borders?

Mr. SIMMONS. Well, I was somewhat surprised that the judge was, as I said, very relaxed. He, every question we asked him he immediately answered. It was a very, in my opinion, rehearsed almost answers, as if the judge had plenty of time to think about what we were going to ask and what his answer would be.

Mr. GEKAS. During the interview what reason did Judge Hastings ascribe for his departure from Washington after learning of the Borders arrest?

Mr. SIMMONS. Judge Hastings advised that he received a phone call from a friend, Hemphill Pride, who advised him that William Borders had been arrested, and he advised him that the arrest somehow involved Judge Hastings, and that it was his opinion and advice to Judge Hastings that the judge return back to the Miami-Fort Lauderdale area as soon as possible. And, in fact, Judge Hastings used the term that he would better able to defend himself on his home turf or on his own turf.

Mr. GEKAS. Did the judge make any reference to any contacts that he tried to make by telephone or otherwise while in Washington preceding his boarding a particular flight?

Mr. SIMMONS. Yes. He advised that at some point in the afternoon, and I think he said it was about 1:50 p.m., that he called his chambers for messages.

Mr. GEKAS. OK.

Mr. SIMMONS. That was the only contact, I believe, that he told me about.

Mr. GEKAS. Was there any mention of any contact with Ms. Williams or the mother, Mrs. Hastings?

Mr. SIMMONS. No, not to me.

Mr. GEKAS. All right.

I would now like to move into the record, if the chair please, Stipulations 196 and 201.

Judge Hastings. There will be no objection, Mr. Chairman.

The Chairman. They will be admitted.

[Stipulation Nos. 196 and 201 were received in evidence.]

Mr. Gekas. Thank you.

Stipulation 196. Prior to being interviewed by the FBI on October 9, 1981, in Lauderhill, Florida, Judge Hastings had not contacted anyone in the FBI that day.

Stipulation 201. On Monday, October 12, 1981, at 6:38 p.m., a telephone call as made from Judge Hastings' home telephone number to William Borders' home telephone number. The call lasted two minutes.

And with the delivery of the exhibit to the clerk, we end our questions of this witness.

The Chairman. Is there cross-examination of this witness?

Judge Hastings. Yes, there is, Mr. Chairman.

Mr. Bryant. Mr. Chairman, prior to cross-examination, which apparently will be done by the respondent, the House would ask the chairman to state clearly the ground rules with regard to the ability of the respondent to deliver into evidence information not previously offered in the course of his what would normally be normal cross-examination. I am referring specifically to the objection I made earlier with regard to the situation that the House finds itself in.

We find ourselves in a position of being unable to cross-examine this party to the case, who apparently will be a witness, with regard to what he might say in evidence at this time. We have no assurances we will have the opportunity to cross-examine him on those statements.

So we would ask for some kind of a statement of the rules with regard to that.

Judge Hastings. Mr. Chairman, may I respond?

The Chairman. Yes, you may.

Judge Hastings. If Representative Bryant would listen to my cross-examination, doubtless he will be given an opportunity to object at the appropriate time. And, if by chance, and I doubt it, there is any problematical undertaking with reference to what I ask, then I suggest that the chair might wish to rule.

I sensed from Senator Leahy's questioning when Ms. Williams was here that there is a distinct possibility that when one is the subject and asks questions it might be construed that that person is testifying. Let me represent to the chair and to the Senators that there is no intention of doing that.

I think that Special Agent Simmons would allow that I have questioned him at my trial previously and we did not have that problem at a jury trial. I consider this at least as high, if not higher, a level than my responsibilities at that time.

But let me add just additionally, so as how the chair, the Senators, and Representative Bryant and the House managers can be relieved. I do intend to testify, and that is unequivocal. So anything that I say here, he will be given an opportunity to ask me and to rehearse and go back over, Mr. Chairman.

The CHAIRMAN. With that representation, I think we will permit the judge to go ahead and proceed with his cross-examination. If there is any specific objection that counsel wishes to make during the course of that, of course, he is free to make that objection.

Judge HASTINGS. Thank you, Mr. Chairman.

The CHAIRMAN. Go ahead.

Senator LEAHY. Mr. Chairman?

The CHAIRMAN. Senator Leahy?

Senator LEAHY. Mr. Chairman, the judge has mentioned the question I had raised earlier when his associate was doing cross-examination. Is it our understanding that she also will be a witness?

Judge HASTINGS. That is absolutely no representation of mine. And I believe if you examine her questioning, Senator Leahy, you will find that she was not testifying. She merely was asking information of the agent.

Senator LEAHY. The chairman has ruled on the question that I raised, and I respect the chairman's rulings. I would just note as one Senator I find it a remarkable procedure, and I find it as one that is very troubling to me. But that, of course, the defense is able to do whatever they want, and we will take whatever consequences may result from that.

Judge HASTINGS. Most assuredly.

The CHAIRMAN. You may proceed, Judge.

Judge HASTINGS. Good evening, Special Agent Simmons. How are you?

Mr. SIMMONS. Good evening. Very well, thank you.

CROSS-EXAMINATION

Judge HASTINGS. I heard you just a moment ago say that you knew where my mother lived because of a prior surveillance. My counsel indicated to me that we have no knowledge of any prior surveillance.

Is there an FBI 302 or a log existing regarding prior surveillance to determine where I lived, or where my mother lived?

Mr. SIMMONS. The surveillance was never actually conducted. The surveillance was to be of you.

Judge HASTINGS. I see.

Mr. SIMMONS. But you never showed up.

Judge HASTINGS. OK. What date was that?

Mr. SIMMONS. I could not give you the exact date, Judge Hastings.

Judge HASTINGS. Well, when you get an assignment to conduct a surveillance, some note is made of it, is it not?

Mr. SIMMONS. Not necessarily.

Judge HASTINGS. I see.

Mr. SIMMONS. Not if it is a negative—if we didn't actually conduct the surveillance.

Judge HASTINGS. I don't want to belabor it. But who was to conduct the surveillance?

Mr. SIMMONS. I do not remember everybody involved. I think Agent Harrigan and myself, and there may have been some others.

Judge HASTINGS. I see. Was it surrounding--just, you know, trying to do the best you can to recall, was it during and/or around the period of time investigation?

Mr. SIMMONS. Yes, there was. It was prior to October 9th.

Judge HASTINGS. All right. I did not want to leave the impression that you were investigating me for something else.

Mr. SIMMONS. Nothing else.

Judge HASTINGS. Now then, did you make rough notes of what transpired when you and I were together in the interview?

Mr. SIMMONS. Yes, I did.

Judge HASTINGS. All right. And did you keep them?

Mr. SIMMONS. Yes. Well, I did not personally keep them. They were maintained in the file.

Judge HASTINGS. Are they still maintained?

Mr. SIMMONS. I do not know. I have not seen them.

Judge HASTINGS. Would you check for us just for future reference—I might be able to have them—and if you have them, would you supply them to my counsel?

Mr. SIMMONS. Yes.

Judge HASTINGS. Thank you.

Now, what time did your day begin on October 9, 1981?

Mr. SIMMONS. Probably about 7:30 in the morning.

Judge HASTINGS. I see. And where were you?

Mr. SIMMONS. I was in the Miami office of the FBI.

Judge HASTINGS. Let me shift to the briefings that take place. How many briefings had you—and how long have you been a special agent of the FBI?

Mr. SIMMONS. In answer to the second question, I have been an agent for approximately 20 years.

Judge HASTINGS. And how many briefings have you participated in prior to October 9th concerning this Apple Eye investigation?

Mr. SIMMONS. Formal briefings, I would—I recall one.

Judge HASTINGS. Who participated in the briefings that you were in?

Mr. SIMMONS. I really do not recall all the individuals. I can tell you that Agent Murphy and Supervisor Amoroso were there, as well as other agents, but I cannot recall who they were.

Judge HASTINGS. Thank you. Who led the briefings?

Mr. SIMMONS. Primarily Agent Bill Murphy.

Judge HASTINGS. Will you please tell the Chairman and the Senators what was discussed?

Mr. SIMMONS. Basically, what was going to be done the next day regarding this case and what the agents—what the responsibilities would be for each agent that was present, what investigative responsibilities.

Judge HASTINGS. Now, then, Agent Simmons, I want to show you what has been marked as the Respondent's Exhibit No. 41.

[Pause.]

Have you had an opportunity to reflect on it?

Mr. SIMMONS. Yes, I have.

Judge HASTINGS. All right. Will you tell the Senators and the committee what that is?

Mr. SIMMONS. It is a subpoena, a grand jury subpoena issued in the southern District of Florida, directed to Secretary, Chambers of Judge Alcee Hastings for records, a return date of October 13, 1981.

Judge HASTINGS. All right. What is the function, your understanding of the function of a grand jury subpoena *duces tecum* to testify?

Mr. SIMMONS. It is a request that records be furnished to the grand jury.

Judge HASTINGS. That is your understanding?

Mr. SIMMONS. An order.

Judge HASTINGS. It is an order that records be brought to the grand jury?

Mr. SIMMONS. That is correct.

Judge HASTINGS. Does it say anything about bringing it by the FBI?

Mr. SIMMONS. No, it does not.

Judge HASTINGS. And among the functions, and I do not mean to be pejorative, but among the functions is to allow the party in interest who receives that to have an opportunity to seek to have it quashed if he or she so sought to do so. Am I correct?

Mr. SIMMONS. That can be done, I am certain.

Judge HASTINGS. Now, I, in this particular matter, am concerned to know just exactly what time of day did you have, or any agent with you among the 11 that went to my chambers on that day, receive that subpoena *duces tecum* to have materials returned to the grand jury?

Mr. SIMMONS. I just do not recall that.

Judge HASTINGS. I am reordering my papers that fell, if you do not mind. I will be right with you.

Now, then, what time did you see me for the first time on the day of October 9th?

Mr. SIMMONS. It would have been approximately midnight. It would have been midnight between the 9th and the 10th.

Judge HASTINGS. And we talked. You say I was relaxed at that particular time.

Mr. SIMMONS. Yes.

Judge HASTINGS. OK. And at that time when you left me, I gave you the places that I could be reached, did I not?

Mr. SIMMONS. I believe so.

Judge HASTINGS. And on October 10th, do you recall whether or not we spoke?

Mr. SIMMONS. Yes, we did.

Judge HASTINGS. All right. And that was the day, so as how we can be as even-handed and fair-minded as possible, that you discovered that I rejected your request to take a polygraph examination. Is that correct?

Mr. SIMMONS. Yes.

Judge HASTINGS. All right. And you did include that in the FBI 302?

Mr. SIMMONS. Yes.

Judge HASTINGS. And on October 11th, did we talk?

Mr. SIMMONS. I do not recall.

Judge HASTINGS. Do you remember a conversation regarding the illegal search of my office—my allegation, my assertion of the illegal search of my office that I perceived at that time that had taken place?

Mr. SIMMONS. I do not really—I recall that was a matter that you and I spoke about.

Judge HASTINGS. Right.

Mr. SIMMONS. But I do not recall when it was, whether it was a day or a month later.

Judge HASTINGS. OK. Did you at some point in time tell me that you would report any complaint that I had regarding those allegations?

Mr. SIMMONS. I do not remember, any more.

Judge HASTINGS. Do you know of your own knowledge whether you in fact did report those allegations, either by me or my staff, at any point in time to anyone, and if so, to whom?

Mr. SIMMONS. Normally, information like that I would have reported to my supervisor, Tony Amoroso, and I am sure I would have mentioned it probably to Bill Murphy, the case agent, but I cannot specifically recall doing that.

Judge HASTINGS. On the night that you received the assignment to find me in Fort Lauderdale, or locate me in Fort Lauderdale, did you and Special Agent Harrigan use a car that was equipped with radio communications so that you could communicate back with headquarters?

Mr. SIMMONS. Yes.

Judge HASTINGS. All right. And at any point during the course of our interview, did you or Agent Harrigan, of your own knowledge, communicate back with headquarters by way of the car radio communications?

Mr. SIMMONS. Yes, we did.

Judge HASTINGS. Did you go outside? Did you go outside of Ms. Williams' house on that evening?

Mr. SIMMONS. I really do not recall. I really do not recall.

Judge HASTINGS. Who gave you the assignment to locate me? You said, I believe earlier when you were testifying on direct, that it was Joe Corliss?

Mr. SIMMONS. Yes. He was the special agent in charge.

Judge HASTINGS. And what did Joe say to you?

Mr. SIMMONS. From what I can recall, he—and I am repeating my testimony of earlier—that you had not been located in Washington and that efforts there had failed to find you, and that there was a possibility you had returned to south Florida, and he asked me and another agent to go out and see if we could locate you.

Judge HASTINGS. Where were you when you received the assignment?

Mr. SIMMONS. I was at home.

Judge HASTINGS. And what time was it? And I don't mean to be coy with you. There have been times once that you have testified it was between 8:00 and 9:00. OK. And there is another time before Judge Godbold's Investigating Committee that you testified that it was 9:30. Now, that all seems to be in the ball park. But as best as you can recall here today for the chairman and the Senators, what time was it?

Mr. SIMMONS. I remember it was before 11:00 o'clock, but that is about all I can remember now.

Judge HASTINGS. And where were you?

Mr. SIMMONS. Pardon?

Judge HASTINGS. Where were you when you received the assignment?

Mr. SIMMONS. I was at home.

Judge HASTINGS. And how far was your house from Stonebridge Gardens, where the prior surveillance had taken place and you learned that my mother lived there?

Mr. SIMMONS. I would say six to eight miles away, approximately.

Judge HASTINGS. What did you do from the time that you received the assignment and the time that you arrived at my mother's house?

Mr. SIMMONS. I contacted Agent Harrigan. I believe there was a delay. He was not home or he was at some sporting function with his son. I left a message for him to call me back. I believe that is what happened. I am not positive.

Judge HASTINGS. Do you keep a log?

Mr. SIMMONS. No. We would not do that normally.

Judge HASTINGS. You got to my house at what time?

Mr. SIMMONS. Your mother's home? That is right, it was your residence. It was approximately 11:00 p.m. The 11:00 o'clock news was on when we finally entered the house.

Judge HASTINGS. Could it have been the 10:00 o'clock news?

Mr. SIMMONS. No. No.

Judge HASTINGS. Now, at that particular point in time when you got to my mother's and, according to you, you were told that I was not there and made that determination, what did you do next?

Mr. SIMMONS. We decided to try and locate Patricia Williams and see if, number one, you were there, or had she heard from you and did she know where you were.

Judge HASTINGS. And your terminology previously has been that that was the next logical step?

Mr. SIMMONS. Yes.

Judge HASTINGS. Did you have a next logical step after Patricia Williams?

Mr. SIMMONS. No.

Judge HASTINGS. All right. So, the simple fact of the matter is that at that time, Special Agent Simmons, you knew, at least based on the briefing and anything you may have come to know yourself, that I knew people all over south Florida, and that I knew south Florida from a geographic standpoint, having lived there for 27 years, fairly well.

Mr. SIMMONS. I do not quite understand your question.

Judge HASTINGS. Let me see, can we do it this way:

You knew or had reason to believe that I knew where hotels were, other folk's apartments, and countless other places that I could have gone.

Mr. SIMMONS. That is a logical assumption.

Judge HASTINGS. You had no personal information regarding that?

Mr. SIMMONS. No. Judge, I did not know you. I never had a case before you before. I didn't——

Judge HASTINGS. You knew that I had been a circuit court judge in Florida.

Mr. SIMMONS. Yes, I did.

Judge HASTINGS. And in Broward County?

Mr. SIMMONS. Yes.

Judge HASTINGS. All right. OK. But you do know as we are here now that if I had desired, I could have sequestered myself or attempted to sequester myself some place?

Mr. SIMMONS. I suppose you could, yes.

Judge HASTINGS. If I had gone in the ghetto, I probably would have been pretty successful, would you not agree?

Mr. SIMMONS. I have an opinion.

Judge HASTINGS. Now, only two of you were assigned to locate me, right?

Mr. SIMMONS. Um-hum.

Judge HASTINGS. And so it is safe to say that local police officials, meaning the Broward County Sheriff's Office or the Metro Dade police officers or the Lauderhill or Lauderdale Lakes police officers, had not been notified indicating that I was a fugitive and that an all-points bulletin should be exercised and that a dragnet was out to catch Alcee Hastings?

Mr. SIMMONS. You were not a fugitive at that time.

Judge HASTINGS. I want you to repeat that. Tell them.

Mr. SIMMONS. You were not a fugitive.

Judge HASTINGS. Thank you very much.

Now, so you went from my rental apartment to Patricia Williams' house, where I was. How long did that take?

Mr. SIMMONS. Probably 30 minutes or so. We had a little trouble locating the address.

Judge HASTINGS. OK. And that took you back up around a circuitous route, so to speak, to try to find that address?

Mr. SIMMONS. That is correct.

Judge HASTINGS. All right. Now, when you got there, I was not hiding, was I?

Mr. SIMMONS. No.

Judge HASTINGS. As a matter of fact, you have testified in the past that I have said that, "Come on in, gentlemen. I was expecting you"?

Mr. SIMMONS. Correct.

Judge HASTINGS. OK. Now, I want to explore that with you as best I can because, based on your experience, what would you, your years as a special agent, as an FBI person, what would you say are the indicia of a person who is fleeing?

Mr. SIMMONS. I do not understand your question.

Judge HASTINGS. Well, certainly you have been seeking persons who learned that they were the subjects and/or the targets of arrest and they left the jurisdiction or left where it was that you were looking for them?

Mr. SIMMONS. Correct.

Judge HASTINGS. Did they have particular indicia or do you have any in your manual about fleeing? What do you learn about fleeting?

Mr. SIMMONS. That is a pretty broad question.

Judge HASTINGS. Give me everything you can, broadly.

Mr. SIMMONS. I do not really know where to begin on that. You would have to be more specific.

Judge HASTINGS. Well, OK.

Was I sweating?

Mr. SIMMONS. I do not recall.

Judge HASTINGS. All right. And you have already testified that I appeared to be calm. I will not belabor the point.

Now, you have testified in the past and at the trial and elsewhere that my mom and uncle told you they did not know where I was. Am I right?

Mr. SIMMONS. Yes. That is correct.

Judge HASTINGS. Now, I know that two constructions, or even more, that can be placed on the fact that I said that I was expecting you, one—this is for my purposes, hypothetical—my mom and/or uncle told you that they did not know where I was and then called me and told me that you had been to Stonebridge Gardens or, two, that my uncle and/or mom told you that I was at Ms. Williams' and then they called and told me you were on your way, and in another scenario they would have called me and told me that you had been to Stronebridge Gardens.

Did you ask me had I been to Stonebridge Gardens?

Mr. SIMMONS. I do not recall.

Judge HASTINGS. But in either event, I was expecting you, you say?

Mr. SIMMONS. You stated you were expecting me, yes.

Judge HASTINGS. And no one that you had had contact with, other than my mom or uncle, could possibly have told me that you were coming to Ms. Williams' home. Is that a fair assumption?

Mr. SIMMONS. It is a fair assumption, yes.

Judge HASTINGS. So, then, is it a fair assumption to say that my mom and uncle knew where I was, having learned from me or either did what you did, take a logical step two, I think you have characterized it as before, and tried to tail me at Ms. Williams' house. Would you agree that that is a logical construction?

Mr. SIMMONS. You would have to repeat the question.

Judge HASTINGS. I think I will go to another one. I think I know your answer to my next question, but I want to ask it anyway.

Special Agent Simmons, did you forget that they told you where I was?

Mr. SIMMONS. No.

Judge HASTINGS. Is the gate guard that evening, who is a gentleman named Paul Kamen, mistaken when he said that the FBI came there twice?

Mr. SIMMONS. I really do not recall his comments of that evening.

Judge HASTINGS. Were you there twice? You certainly would recall that, would you not?

Mr. SIMMONS. Yes. Yes.

Judge HASTINGS. You were there twice?

Mr. SIMMONS. Not on that evening, but twice, one time prior to the night of October 9th.

Judge HASTINGS. On the night of October 9th, you were not there twice?

Mr. SIMMONS. Correct.

Judge HASTINGS. If you were not there, do you know whether other agents were there?

Mr. SIMMONS. On October 9th?

Judge HASTINGS. Yes, sir.

Mr. SIMMONS. I do not know if other agents were there.

Judge HASTINGS. Do you know or did you investigate whether any media people—and I am not calling it an investigation to determine that someone was impersonating an FBI agent—but do you know whether any media people used you of your own knowledge, a ruse indicating that they were FBI persons?

Mr. SIMMONS. No. I do not know.

Judge HASTINGS. That is not an illogical thing or unlikely to occur, would you think?

Mr. SIMMONS. I would be surprised if they did that.

Judge HASTINGS. An interview was conducted. The very first thing that you were asked is, "Are you wired?" Is that not correct?

Mr. SIMMONS. I am sorry?

Judge HASTINGS. By me.

Mr. SIMMONS. You asked me what?

Judge HASTINGS. Did I ask you whether you were wired?

Mr. SIMMONS. Yes—well, I believe you phrased it, you asked me if I had recording equipment in my briefcase.

Judge HASTINGS. In the car?

Mr. SIMMONS. I am not sure whether you meant the briefcase I had with me or in the car.

Judge HASTINGS. All right. We can go back to your prior testimony, it is not critical.

And while I did not ask you to record our interview, I take it that you understood then that I did not mind if you did?

Mr. SIMMONS. I am not sure how you meant that. I do specifically recall you asking me if I did have recording equipment and was I going to record the interview, and I advised you no.

Judge HASTINGS. All right, sir. I will try to move along.

I have since learned, and I think you taught me, that FBI people do not record interviews. Am I right?

Mr. SIMMONS. Correct.

Judge HASTINGS. Is that because your rough notes that may be kept somewhere, and your best memory, rough memory though it may be eight years post an event, in your opinion, is better than what would have been a recorded conversation of yourself and any person you interview?

Mr. SIMMONS. It is just our policy that we do not record.

Judge HASTINGS. Did you do simultaneous questioning of me, I mean, ask me a question and then write it down or have it written down and then write down an answer—dictation, in other words? Did we do it that way?

Mr. SIMMONS. From what I can recall, it was not exactly dictation. I do not believe that I recorded the questions that I asked, but I did record in short note form your answers.

Judge HASTINGS. All right. I did not appear nervous?

Mr. SIMMONS. No, you did not.

Judge HASTINGS. I did not appear afraid?

Mr. SIMMONS. No.

Judge HASTINGS. As a matter of fact, you would even say I did not appear unsure, particularly since you are saying—and have you testified anywhere before that I was rehearsed, anywhere before, in any of the grand jury, Judge Godbold, House inquiry, and I do not think you were there, but at my trial, I do not know whether you were at Borders' trial, but anywhere in the universe of these eight years have you testified that I was rehearsed?

Mr. SIMMONS. I do not recall.

Judge HASTINGS. So, this is the first time you are saying that?

Mr. SIMMONS. I do not recall.

Judge HASTINGS. Special Agent Simmons, is there any reason or did you, in fact, leave doubt of the 302—let me put this another way so I can try to satisfy some of the Senators.

Did I tell you, did I during of the course of that day, and before leaving Miami, to go to Albany and ultimately to go to Washington, DC, was I not feeling particularly well? Did I tell you that on October 9th?

Mr. SIMMONS. I just do not recall.

Judge HASTINGS. So, if I told you, you did not remember or did not think it important enough to put in your 302?

Mr. SIMMONS. That is correct.

Judge HASTINGS. In your testimony at the Investigating Committee, you said that during the interview you all received a call. Did you forget that you received two calls?

Mr. SIMMONS. I do not recall that I received two calls.

Judge HASTINGS. Did Agent Harrigan receive one?

Mr. SIMMONS. I really do not recall. I can remember at least one phone call.

Judge HASTINGS. And the person calling you knew where you were, because when you got up to Ms. Williams' house, you radioed in and said, "We are at Ms. Williams' house." Is that right?

Mr. SIMMONS. That is correct.

Judge HASTINGS. Who was that person?

Mr. SIMMONS. That we radioed to? It would have been the radio operator in the Miami office.

Judge HASTINGS. Is there a log of that?

Mr. SIMMONS. Normally, there is a log of a call being made. Its contents may or may not be recorded. It just depends on what the message is.

Judge HASTINGS. So the one call that you got, who was it from?

Mr. SIMMONS. The call that I received was from the assistant special agent in charge.

Judge HASTINGS. Who was that?

Mr. SIMMONS. I believe his name was Bill Nettles, William Nettles.

Judge HASTINGS. How long did you talk to him?

Mr. SIMMONS. I do not really recall. It would have been a short period of time.

Judge HASTINGS. Is there a log of that?

Mr. SIMMONS. No. We would not normally make a log of that.

Judge HASTINGS. Do you remember what he said?

Mr. SIMMONS. I remember what I have refreshed my memory on recently, and I believe that it was that he was just concerned that everything was okay.

Judge **Hastings**. Mr. Chairman, Mr. Clerk, may I approach the witness?

The **Chairman**. Judge Hastings, we are halfway through a vote on the Senate floor. We had planned to continue until 5:30. Knowing how difficult it is for people to get their vote and return, I think we had best just recess at this point and begin again in the morning at 9:00.

We will do so, and we will see you all in the morning.

[Whereupon, at 5:06 p.m., the committee adjourned, to reconvene on Wednesday, July 19, 1989, at 9:00 a.m.]

IMPEACHMENT OF JUDGE ALCEE L. HASTINGS

WEDNESDAY, JULY 19, 1989

U.S. SENATE,
IMPEACHMENT TRIAL COMMITTEE,
Washington, DC.

The committee met, pursuant to notice, at 9:18 a.m., in Room SH-216, Hart Senate Office Building, Hon. Jeff Bingaman, chairman of the committee, presiding.

Present: Senators Bingaman, Specter, Leahy, Durenberger, Pryor, Rudman, Bryan, Bond, Kerrey, Gorton, Lieberman, and Burns.

House managers present: Representatives Bryant, Conyers, Synar, Gekas, and Fish.

Counsel present: Terence J. Anderson, counsel for Judge Hastings; Patricia Graham Williams, counsel for Judge Hastings; Robert S. Catz, counsel for Judge Hastings; Lewis Myers, Jr., counsel for Judge Hastings; Alan I. Baron, special counsel, House Impeachment Committee; Janice E. Cooper, Patricia Wynn, and Lori E. Fields, assistant special counsel, House Impeachment Committee; Michael Davidson, Senate Legal Counsel; Elaine Stone, counsel, Senate Impeachment Trial Committee; Mark Klugheit, counsel, Senate Impeachment Trial Committee; and Bruce McBarnette, counsel, Senate Impeachment Trial Committee.

Staff present: Anthony Harvey, administrator, Senate Impeachment Trial Committee; P. Casey McGannon, staff assistant, Senate Impeachment Trial Committee; and Isabel McVeigh, staff assistant, Senate Impeachment Trial Committee.

The CHAIRMAN. The committee will reconvene.

Judge Hastings, would you like to continue with your cross-examination?

Judge HASTINGS. Yes, sir.

Mr. Chairman, the first order of business yesterday, I showed Agent Simmons Respondent's Exhibit No. 41, which is the subpoena to testify before the grand jury that was utilized on the day of October 9. And I believe that Casey has it, and I would like at this time to move that exhibit into evidence. I believe the witness has identified it, and the foundation has been laid for its introduction.

The CHAIRMAN. This is Respondent's Exhibit 41?

Judge HASTINGS. Yes, sir.

The CHAIRMAN. Is there objection to the introduction of that exhibit?

Mr. GEKAS. No objection.

The CHAIRMAN. It will be admitted.

[The document referred to was marked Respondent's Exhibit No. 41 and was received in evidence.]

Judge HASTINGS. Thank you very much, Mr. Chairman.

Good morning, Special Agent Simmons. How are you, sir?

TESTIMONY OF JOHN J. SIMMONS, JR., (continued)

CROSS EXAMINATION (continued)

Mr. SIMMONS. Good morning.

Judge HASTINGS. Earlier when we were here and in the presence of Representative Bryant and special counsel Baron, I gave to you one page from your Investigating Committee testimony before Judge Godbold; is that correct?

Mr. SIMMONS. That is correct.

Judge HASTINGS. And I asked you to review a specific portion of that. Now, you do recall that you testified at Judge Godbold's special Investigating Committee, do you not?

Mr. SIMMONS. Yes; I do.

Judge HASTINGS. All right. And that page that I showed you laid out something that we were talking about. Yesterday when we finished, we had gotten to the point—when the vote was being taken by the Senate, we had gotten to the point where Mr. Nettles had called to inquire if everything was okay at Ms. Williams' house, just to review. And I was getting ready then to make a bit further inquiry with reference to how you got to Ms. Williams' house. And I think this page may very well help us a little bit. So let me, having shown it to you, say what it says and ask you a question.

The question was put to you: "Did the Bureau at that time have information as to where Judge Hastings was? Did you think"—this is one of the judges asking you this question—"he was at his home?" Your answer was, "From my recollection, after they were unable to locate the judge in Washington, DC"—and one of my questions right there is the "they" is other FBI agents that were working in the Washington, DC, locale who you are referring to. All right. And "after they were unable to locate Judge Hastings in Washington, DC, it was assumed that he might have traveled back to south Florida and gone to his residence. That's why we went to his mother's residence or his residence first. After that, the only other place we knew of where he might be located was the residence of Patricia Williams."

Now, recalling that, is that the sequence that you utilized in arriving at Ms. Williams' house and the assumptions that you were operating on as a predicate?

Mr. SIMMONS. That is correct.

Judge HASTINGS. All right. Then for all intents and purposes, the assumption proved to be correct?

Mr. SIMMONS. Yes.

Judge HASTINGS. Who made the assumption?

Mr. SIMMONS. Probably myself, if I can remember that far back. It was either myself or Agent Harrigan. Both of us assumed that would be the next logical step.

Judge HASTINGS. But somebody from Washington also had to have said something to somebody at headquarters?

Mr. SIMMONS. No.

Judge HASTINGS. Then in your experience—I want to go back to this fleeing business. In your experience, just based on all of it—you have been in the FBI a long time. Does a fleeing individual go to a place where he would assume the authorities would assume that it is the most logical place for him to go?

Mr. SIMMONS. No.

Judge HASTINGS. I want to then talk a bit more about the state of mind of fleeing subjects. Based on your experience, can you demonstrate for the Senators by way of testimony my state of mind that would cause you to feel that I was fleeing, at the time you interviewed me?

Mr. SIMMONS. Well, Judge, as I testified yesterday, the only way I can describe your demeanor was that you were very relaxed. You did not run when we arrived. You invited us in, and we immediately sat down and began conducting the interview.

Judge HASTINGS. All right. So when I asked you about indicia, I may have been talking about characteristics of persons. Surely you are taught something about how to capture, in your review, whether or not a person is trying to run from the authorities. You are taught something, are you not?

Mr. SIMMONS. I do not know that there is a specific training program regarding that.

Judge HASTINGS. OK. Well, in this particular situation, we can move along. I just wanted you to be able to tell me what it was so that the Senators would know whether or not you thought I was fleeing. Did you?

Mr. SIMMONS. No.

Judge HASTINGS. Now, then, Agent Simmons, I want to show you—and I believe it is in front of you, and I believe, Mr. Clerk, you have it, and, Senators, I am not certain whether you do. I believe you do—a copy of Respondent's No. 42. Can you tell the chairman and the Senators exactly what that is, sir?

Mr. SIMMONS. Yes. This is an FD302 which is a report of my interview with Judge Hastings.

Judge HASTINGS. All right. At this time, Mr. Chairman, unless there is objection, I would like to move Exhibit 42 into evidence.

The CHAIRMAN. Is there objection?

Mr. GEKAS. No objection.

The CHAIRMAN. It will be admitted.

Judge HASTINGS. Thank you very much, Mr. Chairman.

[The document referred to was marked Respondent's Exhibit No. 42 and was received in evidence.]

Judge HASTINGS. How many in your lifetime—and I know this is an estimate—how many 302's have you prepared?

Mr. SIMMONS. Thousands.

Judge HASTINGS. Thousands. That is what I thought would be the answer. And did you give this one, Special Agent Simmons, any special attention, particularly in light of the fact that you knew that it was going to be involving a United States District Court judge? Were you extra special careful in your preparation of the 302?

Mr. SIMMONS. I am extra careful in every 302 I prepare.

Judge HASTINGS. All right. Did you receive special instructions regarding the preparation of your FD302's in this particular case? Just in this particular case, did you receive special instructions?

Mr. SIMMONS. No.

Judge HASTINGS. Well, then, let me ask you if you would look at what is in front of you as Respondent's Exhibit No. 44 and take a moment to look at it. And I believe, Mr. Clerk, you have it. I do not know. Charles, do the Senators have it? All right.

Were you at either of these conferences on the 9th or the 13th?

Mr. SIMMONS. Which conferences are you referring to? The ones reflected here?

Judge HASTINGS. That are referred to by Peter Marcoline there?

Mr. SIMMONS. No, I was not.

Judge HASTINGS. You were not there?

Mr. SIMMONS. No.

Judge HASTINGS. All right. Did anybody convey to you what was conveyed to the persons who were at the conference? Read it and see what they said.

[Pause.]

Judge HASTINGS. Have you had an opportunity to review it satisfactorily?

Mr. SIMMONS. Yes.

Judge HASTINGS. All right. In the first portion of that paragraph—incidentally, do you recognize this?

Mr. SIMMONS. No.

Judge HASTINGS. You do not know anything at all about it?

Mr. SIMMONS. No.

Judge HASTINGS. So other than just as an aid to refresh your recollection, looking at it you do see in there that it talks in terms of an update being furnished concerning the status of the investigation concerning William Borders and Judge Alcee Hastings, and instructions were given regarding the FD302's which were to be written concerning each individual agent's observations and investigation. How is it you did not get any instructions?

Mr. SIMMONS. I was not part of this conference.

Judge HASTINGS. I understand that. But is Peter Marcoline one of the supervisors of this situation?

Mr. SIMMONS. He is not my supervisor. He was a supervisor——

Judge HASTINGS. Well, whose supervisor is he?

Mr. SIMMONS. He was a supervisor of agents in another field division.

Judge HASTINGS. All right. Does he work with Anthony Amoroso?

Mr. SIMMONS. He did on this particular day.

Judge HASTINGS. So no concomitant instructions were being given to other FBI agents about the preparation of what singularly may be one of the most important of the FD302s done in this investigation?

Mr. SIMMONS. Your question is?

Judge HASTINGS. You did not receive here in Miami any instructions?

Mr. SIMMONS. No.

Judge HASTINGS. All right. I understand. We will not make very much of that.

Therefore, then, you could not give Agent Harrigan any instructions about the preparation of the FD302? Who was working with you because we have got these names——

Mr. **Simmons**. It was Agent Harrigan who was working with me.

Judge **Hastings**. All right. And you did not give him any special instructions?

Mr. **Simmons**. No. Agent Harrigan had been at the same briefing that I was at the day before.

Judge **Hastings**. It is just coincidental, referring back to this exhibit? What is the number on it again?

Mr. **Simmons**. 44?

Judge **Hastings**. Yes, sir.

Mr. **Simmons**. OK.

Judge **Hastings**. For identification. It is just coincidental that your work on the FD302, your dictation, was done on the 14th?

Mr. **Simmons**. That is——

Judge **Hastings**. Which would be one day following the special instructions to people about preparation of the FD302's that took place in Washington that you did not take part in?

Mr. **Simmons**. No. The dictation date is the date that the steno typed it. I prepared this on the morning of the 10th.

Judge **Hastings**. All right.

Mr. **Simmons**. I wrote this out, rough-drafted.

Judge **Hastings**. So, then, it is fair to say that on the morning of the 10th that your recollection of the events as you summarized them after a rather laborious day—my recollection is that you say your day began some time around 7:30 in the morning in Fort Lauderdale, and your day ended in Fort Lauderdale, at least insofar as your interviewing me, at around 2:00 o'clock in the morning. Is all of that fair?

Mr. **Simmons**. Yes.

Judge **Hastings**. So then your synopsis the a.m. of that morning that you did, would you say to the Senators that your recollection was better on October 9th about any and everything that I had to say to you than it is today?

Mr. **Simmons**. Yes.

Judge **Hastings**. All right. Then, do you remember everything that each agent did when you were around them in this particular investigation?

Mr. **Simmons**. Are you referring to now or at the time of the investigation?

Judge **Hastings**. At the time of the investigation.

Mr. **Simmons**. Your question again is what?

Judge **Hastings**. Do you remember everything that everybody did that you worked with?

Mr. **Simmons**. No.

Judge **Hastings**. Do you remember what Special Agent Harrigan did?

Mr. **Simmons**. Generally.

Judge **Hastings**. And he was with you about 95 percent—and that is just quantifying for the sake of having a number showing that it was the great majority of time—during the course of the interview that was conducted at Ms. Williams' home of me; am I correct?

Mr. SIMMONS. Yes, that is correct.

Judge HASTINGS. All right. What questions did Agent Harrigan ask me?

Mr. SIMMONS. I do not recall any more.

Judge HASTINGS. Is it in the FD302?

Mr. SIMMONS. No.

Judge HASTINGS. So then there are things that I may have answered, are you telling the Senators, that you did not somehow or another record, or does Agent Harrigan have another FD302?

Mr. SIMMONS. No, there is no other FD302. This summarizes everything that was significant during that interview.

Judge HASTINGS. And you dictated it all?

Mr. SIMMONS. I rough-drafted it all.

Judge HASTINGS. Rough-drafted it all?

Mr. SIMMONS. Yes.

Judge HASTINGS. Did you check overnight to find out about those rough drafts for me?

Mr. SIMMONS. Yes. They cannot be found.

Judge HASTINGS. I see.

Now, then, at the interview itself, you asked me everything you wanted to ask me, did you not, Special Agent Simmons?

Mr. SIMMONS. Yes.

Judge HASTINGS. At that time?

Mr. SIMMONS. Yes.

Judge HASTINGS. And I answered all of the questions that you asked me in our discussion, did I not?

Mr. SIMMONS. Yes.

Judge HASTINGS. Was there ever a time, ever, during the course of that interview that I stated that I refused to answer that question, asserting either constitutional privileges that might exist or for any reason?

Mr. SIMMONS. No.

Judge HASTINGS. Was there ever a time that I said to you, "Special Agent Simmons, I am not so certain about that. My lawyer is back there in the back area"—25 feet away, I believe you testified—"and I want to talk to her before answering that question"? Was there ever such a time as that?

Mr. SIMMONS. No.

Judge HASTINGS. All right. Now, you knew on that date that there had been intercepted conversations of a telephone undertaking between William Borders and myself on the day of October 5th, did you not?

Mr. SIMMONS. I really do not recall whether I knew that.

Judge HASTINGS. Oh, come on, Special Agent. You do not recall whether or not there was a recording and you were at the briefing on the morning of October 9th, and you attended other briefings in preparation for this raid that you conducted on my office, and you do not know that? That is what you are going to have the Senators believe?

Mr. SIMMONS. I do not recall an October 5th recording.

Judge HASTINGS. Let us search our recollection, because easily, by everybody's stretch of the imagination, anybody from your vantage point, mine, the Senators, the House, Judge Godbold, the trial, every place that we have been, October 5th has been a crucial point. Did you participate in the September 29th briefing before, in getting ready down at Miami headquarters in getting ready to consummate this event?

Mr. SIMMONS. I do not recall any more if I did or not.

Judge HASTINGS. Well, did anybody instruct you in that regard about what preparations were going to be undertaken?

Mr. SIMMONS. I was generally aware of the investigation, but my act of participation really began the 8th of October when I was briefed at the conference prior to the day we——

Judge HASTINGS. Well, tell us exactly what you were briefed about and who briefed you and when and where.

Mr. SIMMONS. Judge, I cannot recall that any more. That was eight years ago. I can tell you this: It was a briefing in the Miami FBI office. Most of the participants within the Miami Division were there, and I remember Supervisor Amoroso conducted generally the initial portion of the briefing, and Agent Murphy, the case agent, continued with the details. But, basically, I do not recall anything more than that.

Judge HASTINGS. Do you by chance recall anybody saying that when they made the arrest of William Borders they were going to play recordings for him and seek his cooperation? And I cannot tell you what that cooperation was supposed to be, but that is because I do not know. But do you know?

Mr. SIMMONS. I do not recall specifically.

Judge HASTINGS. You are having a lot of trouble with what you recall, and I cannot leave this point, Special Agent Simmons, because at that point let me give you what I believe the evidence has shown in this case up to this point: that there had been an occasion where I went to dinner at the Fontainebleau Hotel—right, you knew that?

Mr. SIMMONS. I knew it from this testimony and prior testimony, yes.

Judge HASTINGS. There had been an order issued—as a matter of fact, we talked about that, and we will get to that. There had been an order issued in my office, and you knew that.

Mr. SIMMONS. There had been an order issued, yes.

Judge HASTINGS. All right. On the Romano brothers?

Mr. SIMMONS. Yes.

Judge HASTINGS. All right. Somehow or another, somebody forgot, or you do not recall, to tell you that there had been at least one, if not two, Title III wiretap intercepts of William Borders and myself?

Mr. SIMMONS. I was well aware of that, yes.

Judge HASTINGS. That is all I am—well, we finally got there.

Mr. SIMMONS. I did not recall the specific date of October 5th. That is what I was referring to.

Judge HASTINGS. Well, then, you will pardon my incredulity because I was about to really begin to wonder about things. But I understand, and let us go forward.

It is true, then, is it not, that that October 5th recording was then and is now one of only two recorded conversations of William Borders and myself; is that right?

Mr. SIMMONS. I do not know that answer.

Judge Hastings. OK. Is it true or do you know whether or not it is true that the October 5th wiretap call was then and is now one of the important portions of this case?

Mr. Simmons. I recall that that has come up, yes. I do not specifically know how much of a key that played in this case.

Judge Hastings. Did you ask me about the call on October 9th and forget my answer?

Mr. Simmons. I do not recall if I asked you or not.

Judge Hastings. Do you know whether Agent Harrigan asked me about the October 5th conversation and by chance you forgot what he forgot?

Mr. Simmons. I do not recall.

Judge Hastings. So, then, for the chairman and the Senators, it is that one of the most important portions of this case, as we stand here now, you being the first person to talk with me, you do not recall whether or not you asked me about one of the most important portions of this case? That is your testimony today?

Mr. Simmons. My testimony is yes, that I do not recall. I do not believe I did, but my recollection—it has been eight years since that incident.

Judge Hastings. I understand. Please, sir, let us review for the chairman and Senators of the committee, then, what is in the FD302, that I did, in fact, according to you and your synopsis of same, say that either has been in the following categories: confirmed as a fact from the basis of the entire investigation leading up to July 1989, or testified to by agents of the FBI or me or other witnesses along the long course of this saga, and in some respects many of them have been confirmed. Where they have not been, correct me.

Turning now as to what is in evidence as the FD302, our Exhibit No. 42, the last page, the third page. Let us go to October 10th and look at, starting from the bottom up to the second to the last paragraph, "Hastings finally stated that he would cooperate with the Federal Bureau of Investigation in any way possible." Now, that would have been around 2:00 o'clock or thereabouts in the morning of the interview at Ms. Williams' house; am I correct?

Mr. Simmons. Probably.

Judge Hastings. All right. Then the next morning you say—and that has pretty much been confirmed by you and myself.

Mr. Simmons. Yes.

Judge Hastings. All right.

> And on the morning of October 10, 1981, Special Agent Simmons—

You—

> contacted Judge Hastings and asked if he would be willing to take a polygraph examination regarding the previous night's statement. Judge Hastings replied that he would not take a polygraph under any circumstances.

That, by you and me and previous testimony has, for all intents and purposes, been confirmed at least before the Investigating Committee by you?

Mr. Simmons. Correct.

Judge Hastings. All right. Now, then, turning to the first page, and I beg the Senators' indulgence. I do not wish this to be boring, but I deem the point to be crucial with Special Agent Simmons. Let us go through as quickly as we can the first two paragraphs and eliminate them as confirmed. Obviously, there was an interview, there was an address of same, and you Mirandized me. That covers those first two paragraphs, does it not?

Mr. SIMMONS. Yes.

Judge HASTINGS. All right. Now, "William Borders had been a personal friend of Hastings for approximately 20 years." That pretty much has been confirmed, has it not?

Mr. SIMMONS. Yes.

Judge HASTINGS. "Both have been close friends for the past 10 years since Borders was president of the National Bar Association," and we are talking at that time, in 1981. That has pretty much been confirmed, right?

Mr. SIMMONS. Yes.

Judge HASTINGS. So without me having to say something has pretty much been confirmed, you stop me when something has not been.

> They often have social contact when Borders is in south Florida or Hastings is in Washington, DC. Hastings stated that he traveled to Washington, DC., on October 9, 1981, for the purpose of attending a testimonial dinner and boat cruise for Borders. Hastings was to make a speech and present a gift. Prior to traveling to Washington, Hastings traveled to Albany, Georgia, on October 8, 1981, for a speaking engagement at a local college.

All of that has been confirmed and testified to in other matters or in other committees or in other juries before?

Mr. SIMMONS. Yes.

Judge HASTINGS [reading].

> Hastings arrived in Washington, DC—This is the surveillance package—at approximately 10:30 on October 9, 1981, and was picked up at the airport by Borders. They immediately traveled to L'Enfant Hotel in Washington, DC, where both checked into the Pierre Suite. Shortly after checking in, they traveled by Borders' car to the Superior Court building in Washington, DC, where Borders had a hearing before Judge Scott. Hastings waited for Borders in the courthouse lobby. Upon leaving the courthouse, Borders and Hastings traveled to W&W Liquors to purchase liquor for a party after the evening's testimonial dinner.

All of that was confirmed by surveillance testimony and my testimony; am I right?

Mr. SIMMONS. Correct.

Judge Hastings. All right. "Borders immediately"—well, I am ahead of myself. Please excuse me.

"Thereafter, both traveled to Borders' law office." That was surveilled; am I right?

Mr. SIMMONS. To my recollection.

Judge Hastings. All right. Now we get into testimony that you may have heard about.

> Borders immediately made a private phone call, then advised Hastings he would have to leave and would see him later. Hastings told Borders he did not need a ride back to the hotel and would call a cab.

All right?

Now, this little area right here, I would that everybody would make an indentation, because that is an area that it does seem—and I do not believe that you have information about as to whether or not it has been testified about. Let me read that particular sentence:

After Borders left Hastings, called his chambers in Miami for a message check, speaking with Barbara, a law student intern. Hastings placed the call at approximately 1:50 p.m.

And end the brackets right there, if you will, and let us get back into confirmed, partially confirmed, testified to, surveilled and/or followed up on by way of this investigation. "Thereafter, Hastings walked to Nicky's Dress Shop to see a friend named Brenda Russell who was employed at the shop." I will not test your recollection regarding that. We know that in going there Nicky Young and Brenda Russell are what is important.

"He made another stop at a luggage shop." The FBI has gone since that time, you do know, and achieved the receipt from stuff that I purchased at a luggage shop; am I correct?

Mr. SIMMONS. I do not recall.

Judge HASTINGS. You do not know that.

Mr. SIMMONS. No.

Judge HASTINGS. But you cannot refute that.

Mr. SIMMONS. I cannot refute that, no.

Judge HASTINGS. All right. I will get another test if you are not the right witness.

While back in the hotel, Hastings received a telephone call from Hemphill Pride, an old friend who was also in Washington for Borders' testimonial dinner.

I believe it is patently obvious that Mr. Pride has testified same. You did not hear his testimony.

Pride, a former attorney from South Carolina, telephone number (803) 252-5943, was staying in Room 15179 at the L'Enfant Plaza. Pride had been convicted of fraud, recently released from prison. Hastings and Pride had lunch in Hastings' hotel prior to 3:00 p.m., and at approximately 3:00 p.m. went to the hotel bar for a drink.

Now, I am not going to bore these Senators and belabor the point. But continue, if you will, with your own reading, and find one single, solitary thing in there other than the area that I spoke about to you before that has not either been confirmed, partially confirmed, testified to by FBI agents, other witnesses or myself. Please do that, Mr. Simmons, just briefly. You will get through it quicker than I will reading it this way.

Mr. SIMMONS. You want me to continue reading?

Judge HASTINGS. Just read it.

Mr. SIMMONS. OK.

Judge HASTINGS. Just read it, please.

Mr. SIMMONS. "They were served by an Oriental girl possibly named Mai."

Judge HASTINGS. I mean to yourself.

Mr. SIMMONS. OK.

Judge HASTINGS. Out loud, that is what I was doing, and I want to avoid a time problem.

[Pause.]

Judge HASTINGS. And you did not find anything that was not either in the categories that I have identified, without repeating them, did you?

Mr. SIMMONS. That is correct.

Judge HASTINGS. So then look at Respondent's Exhibit No. 43, and this is a manufactured exhibit such that I just want you to see it, and it has—I have excerpted the little portion that there may not be confirmation of as either true or surveilled and/or testified to about. And now having shown the exhibit, it is just a white-out. There is no page 2, there is no page 3, and the reason for it is all that is confirming, sort of like this graphic illustration we have over here. So that is all that is left, is it not?

Mr. SIMMONS. Yes.

Judge HASTINGS. I now move Respondent's Exhibit 43 into evidence.

The CHAIRMAN. Judge, could you explain to the Chair what this exhibit is?

Judge HASTINGS. Merely, Mr. Chairman, to do the exact same thing in some particulars as the elaborate chart up here that does nothing more than demonstrate again what the questioner has put to the witness, that now eliminates everything in FBI 302 that my next questioning will sum up with reference thereto. And all that is left that I talked with this witness about—

The CHAIRMAN. This is a Xerox copy of the first page of Respondent's Exhibit 42 with everything blocked out except the two sentences.

Judge HASTINGS. That is correct. Yes, sir.

The CHAIRMAN. Is there objection to this exhibit?

Mr. GEKAS. No objection.

The CHAIRMAN. It will be admitted.

Judge HASTINGS. Thank you very much, Mr. Chairman.

[The document referred to was marked Respondent's Exhibit No. 43 and was received in evidence.]

Judge HASTINGS. Now, then, Special Agent Simmons, other than the matter in the FBI 302, nothing is contested, and in many respects and particulars, everything is confirmed. Now, you told the chairman and the Senators yesterday that I appeared to be rehearsed, and I want to get into this with you because I did not know what you were going to ask me, did I? You did not send up a script to——

Mr. SIMMONS. No, I did not. No, I did not.

Judge HASTINGS [continuing]. To Washington or out to the Fort Lauderdale airport or over to my mom's, or you did not hand me a script when you got to Ms. Williams' house?

Mr. SIMMONS. No, I did not.

Judge HASTINGS. All right. And then you had the advantage, so to speak, in the setting of this interview stage of asking me, as I have done you, bits and pieces from any portion of what was in your memory that you wished to ask me about. You did have that.

Mr. SIMMONS. Judge Hastings, I recall that I asked you to give me a chronological order of the day's events of October 9th.

Judge HASTINGS. Right.

Mr. SIMMONS. And we went through that, and then after it was done and I had completed my interview, I went over my notes with you step by step to make sure we agreed on every point.

Judge HASTINGS. So we rehearsed?

Mr. SIMMONS. At that point, we made sure we had it correct.

Judge HASTINGS. All right. And you asked everything in the form you wanted to ask it, several different ways, did you not?

Mr. SIMMONS. I do not recall exactly how many different ways I asked the question.

Judge HASTINGS. All right. Well, then, will you please explain to the chairman and Senators, then, the basis for your statement that I seemed to be rehearsed?

Mr. SIMMONS. Your answers were instant. Whatever I—as we were asking questions, as you were providing a chronological order of the day's events, and I would stop and ask you a question, such as what time it was, you knew instantly. There was no pause or hesitation.

Judge HASTINGS. Right. Sort of like your direct testimony yesterday when Representative Gekas was questioning you. Same.

Mr. SIMMONS. Yes. I had reviewed just prior to that——

Judge HASTINGS. In other words, that I went to Washington, that does not require a whole lot of rehearsal, does it?

Mr. SIMMONS. No.

Judge HASTINGS. And that somebody picked me up at the airport and all of the other particulars of that event—you know, I do not want to quibble with you. The FBI did not know on October 9th who I went to dinner with, did they, Special Agent Simmons? They did not know.

Mr. SIMMONS. Who you went to dinner with?

Judge HASTINGS. And I told you first.

Mr. SIMMONS. At what time?

Judge HASTINGS. On October 9th, when you interviewed me——

Mr. SIMMONS. Yes, I understand that. But had dinner with who when?

Judge HASTINGS. Essie Thompson. It is in the FBI 302.

Mr. SIMMONS. Yes.

Judge HASTINGS. I told you that first.

Mr. SIMMONS. Yes.

Judge HASTINGS. All right. Now, then, the FBI did not know where I went on October the 9th when I left Borders' office, and I told you first where I went, did I not?

Mr. SIMMONS. Yes.

Judge HASTINGS. All right. The FBI did not know all of the particulars with reference to the *Romano* order, at least from m point of view regarding that order. And you asked me about it, an I told you first, did I not?

Mr. SIMMONS. Correct.

Judge HASTINGS. The FBI did not know how I got to Fort Lauderdale from Washington, DC, on October 9th, and I told you first.

Mr. SIMMONS. Correct.

Judge HASTINGS. All right. Now, Special Agent Simmons, you and I talked on October 9th for nearly three hours; am I right?

Mr. SIMMONS. About two-and-a-half.

Judge HASTINGS. And that has been reduced to two-and-three-quarter pages of a synopsis, two-and-three-quarter hours, right?

Mr. SIMMONS. Yes.

Judge HASTINGS. Just for illustrative purposes, you had started at 7:30, and share with me what I believe the evidence has shown and I believe you know now based on your follow-up during the eight years of the investigation. Is it fair to say that by the time we finished you were pretty tired?

Mr. SIMMONS. I suppose I was. I usually would be at that time in the morning.

Judge HASTINGS. Would it be fair to say that if my day began in Georgia roughly an hour-and-a-half before yours and that I went to Washington, DC—and the evidence has shown this—and if the evidence shows that Bill Borders picked me up and we went a roundabout and got to his office, and if the evidence shows, whether it is believed or not believed, where I went when I left Borders' office, and picked back up, if the evidence shows that I got to the L'Enfant Plaza Hotel and had soup and a sandwich, received a phone call from Hemphill Pride; he joined me, and if the evidence shows that Hemphill Pride and I went down to the bar, had two drinks—and the name of that bar is The Apple of Eve—and may have been served by an Oriental or Asian person, as is in your FD302, went back to my room, some time obviously between the hours of 3:00 and 4:30 or thereabouts, received a call from Pride, was told that Borders was arrested, went to Baltimore, Maryland, left Baltimore, Maryland, by plane, took a fairly turbulent flight home, arrived home, went to my residence, left my residence, went to Ms. Williams' house, invited you in, had our discussion until 2:00 o'clock in the morning, I just am curious when I had time to rehearse all of that trauma, all of the events of that day. Wouldn't you think it is a better characterization to say that I told you everything you asked me, and it has been determined for all intents and purposes to be the truth?

Mr. SIMMONS. Yes.

Judge HASTINGS. Now, then, I want to go to just a little bit more, and we will be through. I want to go back to our grand jury subpoena. Do you have a copy of it?

Mr. SIMMONS. No.

Judge HASTINGS. Let me, please, give you one. I believe the Senators have copies, and I refer to Respondent's Exhibit No. 41. And, Mr. Chairman and Senators, this will be my last line of inquiry.

Agent Simmons, you arrived at my chambers on October the 9th, you say in another exhibit introduced by Representative Gekas on yesterday, whose number escapes me, at roughly 2:50 p.m. on that day; is that right?

Mr. SIMMONS. Correct.

Judge HASTINGS. And you had what is Respondent's Exhibit No. 41 in your hands when you arrived there, did you not?

Mr. SIMMONS. Yes, that is correct.

Judge HASTINGS. What time did Special Agents Cameron and Aldridge arrive at my chambers?

Mr. SIMMONS. Approximately the same time I did.

Judge HASTINGS. Just a wee mite before you, though, did they not?

Mr. SIMMONS. Yes, I believe it was a few minutes.

Judge HASTINGS. All right. So you do not really know what they did when they got there most immediately because you did not walk in with them at that time, did you?

Mr. SIMMONS. Correct.

Judge HASTINGS. And you also said yesterday—and we do not want to quibble about this, but numbers can get to be important in a proceeding like this—there really were 11 FBI agents that went to the office; am I correct? I am talking about the chambers in Miami.

Mr. SIMMONS. I do not recall the exact number.

Judge HASTINGS. We can count them up.

Mr. SIMMONS. Generally, that seems to be about right.

Judge HASTINGS. At least 10. They do not come by two's. They come by 10's.

Mr. SIMMONS. I believe there were probably 10 or more, a little more.

Judge HASTINGS. All right. You took certain items from my office on that date, did you not, Special Agent Simmons?

Mr. SIMMONS. We were given certain items by your secretary.

Judge HASTINGS. Now, that is where we run into a little bit of difficulty. You knew what this was, did you not?

Mr. SIMMONS. Yes.

Judge HASTINGS. And under what aegis did you get the things given to you? How were you traveling? You were traveling on this subpoena, were you not, duces tecum, to something to come back to a grand jury to be brought by the secretary to Judge Hastings?

Mr. SIMMONS. Your secretary asked us if we wanted them.

Judge HASTINGS. My secretary?

Mr. SIMMONS. I am sorry. Marilyn Carter, I believe.

Judge HASTINGS. Exactly. My secretary was not there, was she now?

Mr. SIMMONS. No, she was not.

Judge HASTINGS. All right. And you received a call while you were talking with Marilyn Carter from her husband, who is a detective with the Miami police force, to tell you exactly how you might go and locate her, did he not?

Mr. SIMMONS. No, I do not believe so. I——

Judge HASTINGS. Well, he told you about what time you might be able to interview her?

Mr. SIMMONS. Yes, that is correct.

Judge HASTINGS. And you dispatched agents from the office to go to interview her?

Mr. SIMMONS. That is correct.

Judge HASTINGS. All right. And you did not dispatch this subpoena with those agents?

Mr. SIMMONS. No, I did not.

Judge HASTINGS. Are you going to tell the chairman here and the Senators that Marilyn voluntarily said, "Here, take all of this stuff, you go on with it, Agent Simmons, because you're entitled to it"? Is that how you got it?

Mr. SIMMONS. U.S. Magistrate Palermo told Marilyn Carter to turn this stuff over to us, turn the records over to us.

Judge HASTINGS. And how did Magistrate Palermo—and I did not want to drag his name into these proceedings. How did he get there?

Mr. SIMMONS. He was brought there I believe by one of the law interns.

Judge HASTINGS. Would it surprise you to know that Magistrate Palermo was told by somebody, "You get your ass out of here"?

Mr. SIMMONS. I would disagree with that completely. I was there during the whole time that Judge Palermo was in that office, and it was a very cordial——

Judge HASTINGS. Did he also say that it says October 13th——

Mr. **Bryant**. Pardon me, Mr. Chairman. We would like——

Judge **Hastings**. Excuse me, Mr. Chairman. Mr. Chairman, Representative Bryant is not on this witness. Now, he has talked to us about double teaming enough here. It is Representative Gekas' witness, and I would like to hear from him if he has an objection.

Mr. **Bryant**. Mr. Chairman, my objection is simply that the witness must be allowed to complete his answer. He was cut off in mid-answer.

The **Chairman**. I believe if the witness would like to complete an answer to any question he is certainly entitled to do that.

Judge **Hastings**. I agree, and I apologize to the Chair if I cut the witness off. I do not apologize to Representative Bryant whose witness this is not.

The **Chairman**. Does the witness have any additional answer to give to any of that line of questions?

Mr. **Simmons**. Regarding Judge Palermo and regarding the statement that he was told to "get his ass out of there," that is absolutely untrue.

Judge **Hastings**. All right. Was he put out?

Mr. **Simmons**. No.

Judge **Hastings**. Was he permitted to stay?

Mr. **Simmons**. Yes.

Judge **Hastings**. Did the chief judge, C. Clyde Atkins, of that court, was he on the premises when you raided my office?

Mr. **Simmons**. You mean when we arrived at your office?

Judge **Hastings**. That is correct.

Mr. **Simmons**. No, he was not.

Judge **Hastings**. Had you talked with him?

Mr. **Simmons**. No, I had not.

Judge **Hastings**. Do you know if anyone had talked with him that was in a supervisory capacity from the FBI and sought from him a search warrant, which would be the appropriate aegis to take things from a person's office?

Mr. **Simmons**. Nobody did speak to him.

Judge **Hastings**. What were the exigent circumstances, Special Agent Simmons, that caused you to take stuff under a subpoena that is only allowed by way of a warrant? What were the exigent circumstances?

Mr. **Simmons**. There to my knowledge were not exigent circumstances. Marilyn Carter, your courtroom clerk, voluntarily gave them to us after Judge Palermo specifically stated that "This is a subpoena *duces tecum*; you should furnish the records to the FBI." I advised her she did not have to furnish the records to us, she could bring them with her then. But routinely, in a situation like this, we are usually furnished those records; but she had the option.

Judge **Hastings**. Tell me another time anywhere in America that you took a subpoena *duces tecum* to an office or business or person's home and took material that was designated to be returned to a grand jury by a specific individual. Identify that case for me.

Mr. **Simmons**. I cannot identify specific cases, but I have done it many times; telephone toll records, for example, just as an example.

Judge HASTINGS. You have other kinds of subpoenas for that, do you not?

Mr. SIMMONS. Well, yes, now we do. We have administrative subpoenas.

Judge HASTINGS. You also have an index for when you do take things, either by warrant or otherwise, do you not?

Mr. SIMMONS. What do you mean by an index?

Judge HASTINGS. Well, let us look at your index. You took stuff out of the office on October 9, 1981. That is your index, page 2?

Mr. SIMMONS. Yes. It was a general description of what we got.

Judge HASTINGS. You did not go there with a form, did you? You know, you all have an index form. When you take stuff, you write down what you take, and then there is a clear record of it, not your little old handwriting.

Mr. SIMMONS. Some agents use that form. There is no specific Government-wide form. It is up to the individual office.

Judge HASTINGS. I do not want to quibble with you.

You prepared a memo about this particular matter because my staff made allegations to the effect that on October 9th the FBI raided my office and illegally seized materials; is that not true? I am not saying that you illegally seized anything. Your contention is that you did not, and I will accept your contention for purposes of this hearing. But is it not true that one of the reasons you reduced that memo that was introduced by Representative Gekas is that there were allegations swirling around, among other things, this particular investigation, leaks to the grand jury and other things that you all were concerned to protect the propriety of what you had undertaken; am I correct?

Mr. SIMMONS. Yes, that is correct.

Judge HASTINGS. Do you remember that I alleged that your agents abused the subpoena power, albeit quarrelsome as it pertains to your testimony, but the allegation was out there; is that correct?

Mr. SIMMONS. Yes, that is correct.

Judge HASTINGS. All right. Do you, sir, remember that I alleged that some agents used racially-intoned statements when they were talking to my staff about me? I am not saying it was true. I am saying that it was an allegation. Do you agree?

Mr. SIMMONS. I remember one——

Judge HASTINGS. It does not take but one.

Mr. SIMMONS. One allegation. I do not recall if it came from you or if I just saw it reduced in writing.

Judge HASTINGS. Well, from either me or from a member of my staff.

Mr. SIMMONS. Yes, I do recall there was one statement that was alleged.

Judge HASTINGS. Do you remember that I alleged that a then reporter who is now an attorney named Andy Rosenblatt of the Miami Herald was at the office? Your testimony has been that a reporter came to seek out the *Romano* file. Would it surprise you to know that Andy Rosenblatt says that he came with you, and his article that he reported shows that the FBI raided—that is the exact term that he used—and took materials out of Judge Hastings' office, and that was in his Miami Herald report on September

11th? Does that surprise you? And that that allegation was out there that the Herald either had an office at the FBI or the FBI had an office at the Herald? Do you recall the allegation? That is all. Not the substance as to its truth.

Mr. SIMMONS. I vaguely recall that allegation, yes.

Judge HASTINGS. All right. And do you remember that I alleged that my staff reported that you restricted them when you were conducting your interview, that you intimidated them, not Special Agent Simmons but any number among the 11, and that those allegations were rife at that particular point in time? R-i-f-e, rife, surrounding. Do you remember that?

Mr. SIMMONS. Yes, I remember it.

Judge HASTINGS. And do you remember that my staff and ultimately I alleged that you went into my inner office and that you spent time in there? Your testimony has been that Marilyn showed you inside; you conducted the interview in an effort to don't be involved in a lot of hoi polloi in the office and to keep it running at an even flow with 11 FBI agents there and Magistrate Palermo coming by and others by that time? Courthouses, like Senate office buildings, have big ears. But so you remember, do you not, that I did make that allegation; that you went in my inner office, closed the door, and left there, albeit whether it is true or not, with things from my office that were personal? That was an allegation. Now, whether it is true, that will be determined at another point in time.

Mr. SIMMONS. Generally, I recall that allegation. I do not remember the part about personal items.

Judge HASTINGS. Do you remember——

Senator RUDMAN. Mr. Chairman, you know, I find this line of questioning very interesting. But I will tell you as a panel member, Judge Hastings, I understand your intensity. I understand it, but you are going to have to ask questions, stop, and let this witness answer, because this record is going to read very poorly unless you do that.

Judge HASTINGS. Mr. Chairman, if you read yesterday's record, I think the reporters, Senator Rudman, will let you know that I am not having any difficulty being followed. I understand you, and I want you to know that in some respects I was imitating your style.

Senator RUDMAN. Mr. Chairman, I would like to have the witness answer the questions. I think they are very interesting questions, but the answers are not very interesting because I cannot hear them.

Judge HASTINGS. Thank you, Mr. Rudman.

The CHAIRMAN. I do think if the witness could be allowed some additional time to respond whenever there is a question posed, I think that would be useful.

Judge HASTINGS. John, if you have any, stop me. I am almost finished.

Mr. GEKAS. Mr. Chairman?

The CHAIRMAN. Representative Gekas, did you have a point?

Mr. GEKAS. The judge asserts that he is almost finished. We should apprise you that now a vote has been called for in the House, and we do not know whether——

Judge HASTINGS. Almost finished means two minutes, Representative Gekas.

Mr. GEKAS. Well, then, we should proceed.

Judge HASTINGS. We were at just allegations. That is all these are. You do remember the above allegations were made earlier in the investigation, do you not, Special Agent Simmons?

Mr. SIMMONS. Generally, yes.

Judge HASTINGS. And you do remember that some kind of internal investigation was made of the allegations?

Mr. SIMMONS. Yes, that is correct.

Judge HASTINGS. And, Special Agent Simmons, final question: Did you or anyone that you know in the FBI, the Public Integrity Section, Judge Godbold's inquiry committee, Congressperson Conyers' subcommittee, Chairman Rodino's House Judiciary Committee, the entire Congress, special counsel for the Congress, or any other person—John Doar, Alan Baron, the Attorney General, or the FBI Director—ever report the findings of that internal investigation regarding my allegations that I have exercised myself—and that I apologize to Senator Rudman and everybody else if you did not get a chance to answer. But did, sir, anybody that you know of or your or your supervisor tell any one of the many attorneys that have represented me, and more specifically Professor Anderson, Ms. Williams, Professor Catz, Lewis Myers, and the lawyers here assembled, in either 1981, 1982, 1983, 1984, 1985, 1986, 1987, and 1989 as we sit here in July about the results of that investigation?

Mr. SIMMONS. It is a pretty long question. Are you asking me——

Judge HASTINGS. Did anybody——

Mr. SIMMONS. Did anybody—would you——

Judge HASTINGS [continuing]. Ever tell me what the results were?

Mr. SIMMONS. I do not know that answer. I do not know.

Judge HASTINGS. Me either. Thanks.

Senator RUDMAN. Mr. Chairman, I have a question for Judge Hastings.

The CHAIRMAN. Senator Rudman.

Senator RUDMAN. I just want to refer to Exhibits 42 and 43 which you introduced.

Judge HASTINGS. Yes, sir.

Senator RUDMAN. I just want to understand the purpose for which it was introduced.

Is Exhibit 43 introduced for the purpose that that is the only item that is contained in Exhibit 42 that is not confirmed, corroborated, and agreed to by independent testimony, or simply in evidence?

Judge HASTINGS. No. That—precisely what you said, Senator Rudman. That is the only item here that has not been testified to, in large measure confirmed, or corroborated by other witnesses and certainly testified to. That would be the only area left to further inquiry.

Why I brought it up was to demonstrate that I was not rehearsing and that it was so easy to tell the truth. That is the only reason I brought it up.

Senator RUDMAN. Well, I appreciate it. Then let me ask just this last question to counsel on the third paragraph of Exhibit 42.

Judge **Hastings**. Yes, sir?

Senator **Rudman**. I am sorry. On page 2, the second paragraph, starting with "Hastings stated," on page 2. Do you see what I am looking at?

Judge **Hastings**. Is it in the second paragraph?

Senator **Rudman**. Second paragraph.

Judge **Hastings**. Yes, sir. Yes, sir.

Senator **Rudman**. "Hastings stated that approximately three weeks ago he received a telephone call from Borders who asked him to meet him at the Fontainebleau Hotel for dinner."

Judge **Hastings**. Yes.

Senator **Rudman**. Have I missed something? Is that in evidence from a phone conversation?

Judge **Hastings**. No, but there is testimony regarding how Borders learned—or how I learned that Borders was to be at the FBI. And what he put in here was this particular matter. I am referring to the fact that there is going to be and was testimony concerning how I learned that Borders was to be at the Fontainebleau.

Senator **Rudman**. But there was no testimony before us yet, I take it?

Judge **Hastings**. No.

Senator **Rudman**. All right. Thank you.

The **Chairman**. We will take a short recess while the House members vote.

Judge **Hastings**. Thank you, Mr. Chairman.

[Recess.]

The **Chairman**. The committee will reconvene.

Representative Gekas, did you have redirect examination of the witness?

REDIRECT EXAMINATION

Mr. **Gekas**. Yes, we do, Mr. Chairman. But before we get into that, during the course of the cross-examination by the judge, there was an allusion made—not an allusion but actually in the form of the question and part of the answer, there was an allusion also made to the set of notes, the personal notes, the interview notes undertaken by the agent at the time of the interview of Judge Hastings. We want the record to be clear that those interview notes were until very recently in the custody of, sole custody of the Justice Department and was part of the package of materials which the Senate committee had the duty and obligation which it discharged, as I understand, of going through to determine which of those should be made available to the respondent and which should not. We want the record to be clear that these interview notes were not withheld from the respondent or in any other way prevented from coming into evidence. They were part of the Justice Department package.

The **Chairman**. We appreciate that representation.

Judge **Hastings**. Mr. Chairman, I do not wish to belabor the point. It really was not a big problem, but Representative Gekas is correct. We did not have them, and we did not have them at the trial or at any point during the entire process. Now, I do not know how we could have gotten them save the fact that we asked for them and did not have them. I do not think it is a big point. Therefore, I do not want anybody searching around for Special Agent Simmons' rough notes.

The CHAIRMAN. I appreciate that.

Mr. GEKAS. That is fine. We just want the record to be clear.

The CHAIRMAN. Go ahead with your redirect.

Mr. GEKAS. Mr. Simmons, the judge in cross-examination made reference to allegations of misconduct by the members of your squad when they entered the chambers, et cetera. You heard the litany of allegations implicit in the judge's questions and explicit in his questions. What was your conclusion at the time that all of this occurred? What was your conclusion as to these allegations and those made at that time?

Judge HASTINGS. Mr. Chairman, I object. It is not this witness's conclusions. It was an internal investigation. And what we need to know is what were the results of the internal investigation. And my objection is as to the relevance of this witness's conclusions.

The CHAIRMAN. Judge, the objection will be overruled. The witness can give his own opinion as to the validity of those allegations at that time.

Judge HASTINGS. Thank you, Mr. Chairman.

Mr. SIMMONS. In my opinion, considering I still have a job, they were unfounded.

Mr. GEKAS. All right. Thank you.

Also, reference was made by the judge in the content of his questioning about the swarming in of agents for the purpose of serving the subpoena and interviewing the witnesses. My word is "swarming," but the general effect of what he said was that.

Tell once and for all, what is the standard practice of the FBI in attempting to conduct interviews on the spot immediately following a crucial event, and why so many agents were employed.

Mr. SIMMONS. We wanted to conduct simultaneous interviews. We did not want to have people in a position, those that were to be interviewed to be in a position to compare notes. We felt we would come closest to the truth that way, from that approach.

Mr. GEKAS. All right. Thank you.

Also during the cross-examination of Judge Hastings, he made a great deal out of, through his questioning, of your not knowing of certain events, like those that happened in Washington or who was in a particular briefing, that kind of question. I think it should be clear on the record, and I will ask you questions as to who was the main agent in this case.

Mr. SIMMONS. The case agent was William Murphy.

Mr. GEKAS. And what was your solitary role in this investigation?

Mr. SIMMONS. My role was primarily to interview the courtroom clerk, Marilyn Carter, to see that the subpoena was served, and to act as a coordinator between the agents up in Washington and the agents who were to conduct interviews in Miami.

Mr. GEKAS. All right. Thank you.

The judge also made a point, and Senator Rudman asked a question later relative to that point, that the report that you made, an excerpt of which the judge offered and was accepted as a separate piece of evidence to be admitted into the proceedings, that all of the things that you had rendered in your report were confirmed in one way or another by other testimony or other pieces of evidence throughout the course of all these proceedings from start to end. Do you recall that line of questioning?

Mr. SIMMONS. Yes, I recall.

Mr. GEKAS. My question to you is: From your knowledge of the case, are there additional explanations testified to by Judge Hastings at his criminal trial and in other proceedings that are not in this report?

Mr. SIMMONS. Yes. I assume there are. I was only involved minimally in this investigation. And as far as who testified to what, I am just not familiar with, other than what I may have heard from other agents, the details of which I really do not recall any more.

Mr. GEKAS. And the other explanations were not a part of any of the things that Judge Hastings told you on that night; is that correct?

Mr. SIMMONS. Correct.

Mr. GEKAS. I have no further questions of the witness. I now ask the Senate to indulge us in revealing more of the activities of October 1981 through the demonstrative chart. We will remove the October 9th entry as to 10:40 a.m. and October 9th at 9:00 a.m.—wait. Is 2:50 a.m. the next one? Yes, 2:50 p.m., and October 9th, 2:50 to 3:00 p.m.; and October 9th at 4:37 p.m.; October 9th, 4:43 p.m., 5:06 p.m., 5:07 p.m., 5:22 p.m., 5:24 p.m., 6:30 p.m., and 8:38 p.m.; then about midnight, and then on October 12th at 6:30 p.m.

We thank the Chair and the members of the committee.

The CHAIRMAN. Judge Hastings, do you have any recross?

Judge HASTINGS. No, Mr. Chairman. Thank you so very much.

The CHAIRMAN. I have no questions of this witness. Senator Specter, do you have questions?

The VICE CHAIRMAN. Yes. Thank you, Mr. Chairman.

Mr. GEKAS. Senator Specter, if I may interrupt, we have one more disclosure, October 9th, in the a.m. That completes our demonstrative chart.

Thank you.

The CHAIRMAN. Thank you, Representative Gekas.

Senator Specter?,

EXAMINATION BY THE COMMITTEE

The VICE CHAIRMAN. Special Agent Simmons, as I understand the development of the evidence, you did not ask Judge Hastings about the telephone conversation between Judge Hastings and Mr. Borders on October 5th, is that correct?

Mr. SIMMONS. Yes, I believe that's correct.

The VICE CHAIRMAN. How did you happen to omit that, if you can give an explanation for that?

Mr. SIMMONS. Well, Senator, my interview of Judge Hastings was somewhat of a last-minute decision by my boss, and the reason that was so was because they wanted to have Judge Hastings interviewed as soon as possible. The case agent, who would have been able to more effectively conduct the interview, was not available. He was up in Washington, DC.

My interview was based, my ability to conduct the interview was based on what I had learned generally about the investigation, but more specifically what I had heard in the briefing just the day before. I did not have all the facts of this case; I didn't know everything that was occurring in the case because there was a portion of this investigation being conducted in Miami, and then, of course, there was another portion that I was in not any way connected to being conducted in Washington, so, therefore, I did not know all the details of the phone calls, the Title III and so on, questions that were asked of me by Judge Hastings.

The VICE CHAIRMAN. Well, to abbreviate the questions which are on my mind, the long and short of it is you did the best you could——

Mr. SIMMONS. That's exactly the situation.

The VICE CHAIRMAN [continuing]. Based on what you knew, but I find that very, very surprising, in light of the fact that this was a very, very important questioning in a very important case, not to be done by the case agent who would know the case thoroughly, to question and to, in effect, examine or cross-examine, based on the responses given by Judge Hastings in terms of what other facts had been discovered or were alleged or thought to be true, including the October 5th telephone conversation which had been recorded, to confront Judge Hastings with that.

The additional thought on my mind is, in a matter of this importance, although it is not the customary practice of the FBI to go beyond the case agent, those who know about the case, to even give consideration to having somebody from the Department of Justice, an experienced lawyer question a suspect, Judge Hastings, under these circumstances.

I have summarized 15 questions into one, but why wasn't that kind of attention given to this kind of an interview?

Mr. SIMMONS. Senator, I really don't know the answer to that. I was not in a policy-making position at that point.

The VICE CHAIRMAN. The other subject that I want to raise with you is the issue of this subpoena and the practice of obtaining all of the records, as you did. Was consideration given to obtaining a search warrant?

Mr. SIMMONS. No, it wasn't. It was not considered to be a search, nor were we looking to do a search.

The VICE CHAIRMAN. Why not? When you serve a subpoena, it calls for the materials to be produced at a later date. They can be secreted, it would be obstruction of justice, but materials could be hidden or not responded to in the course of a subpoena, so that when there is a consideration that someone may be a defendant in a case, the customary practice, the wise practice, it would seem to me, would be to use the route of the search warrant, as opposed to a subpoena. I guess there was no assurance when you went there that anybody was going to voluntarily turn over the materials to you, although I understand that to be a disputed question here.

Mr. SIMMONS. Under normal circumstances, if we feel that records are going to be altered or destroyed, we would get a search warrant. But again, Senator, that was a matter that would have been discussed between the prosecutor and the case agent, not by myself.

The VICE CHAIRMAN. You don't know what occurred on that?

Mr. SIMMONS. No, I don't.

The VICE CHAIRMAN. And the other question, just to boil it down, is a question about the practice of even getting a subpoena *duces tecum* for judicial records, which are very all-encompassing, as the subpoena recites, in terms of calling for the production not only of the *Romano* case, which is the relevant one, but of perhaps many other cases involving memoranda or other documents where the United States might have been a party, so that there could be access to confidential matters in possession of the court, where other matters were subject to litigation involving this judge, where the United States is a party, it would be highly prejudicial to those matters. Was any thought given to that kind of a situation and this kind of a broad subpoena *duces tecum*.

Mr. SIMMONS. Again, Senator, I was not the one that was responsible for the drawing up of the subpoena or the decisions that went into using the subpoena with that terminology.

The VICE CHAIRMAN. I won't pursue the matter further at this time. I understand the limitations, but those are very important questions, and they, perhaps, will be pursued by the Judiciary Committee or some other committee in terms of what's going on with the Department of Justice and the FBI in terms of congressional oversight in a different capacity.

Thank you.

The CHAIRMAN. Are there questions? Senator Leahy.

Senator LEAHY. Very briefly.

Special Agent, we see all the special electronic gear that the FBI has, they could put microphones on people and tape recording devices and intercepts on telephones and tape recordings and all of that, but when you go to interview somebody, it's something like a hundred years ago, you take a piece of paper and write down the questions and write down their answers. Why don't you tape-record the conversation? Wouldn't that give us a more accurate an understanding of the question of whether somebody sounds rehearsed or hesitant or whatever? We would have the actual recording, we could hear it.

Mr. SIMMONS. Well, as I believe I testified earlier, Senator, it is not the FBI's policy to tape-record conversations.

Senator LEAHY. I understand it is not. Why isn't it?

Mr. SIMMONS. It is not the policy, and personally I concur with this, that when you are trying to elicit cooperation or facts, the truth, and you take out a tape recorder and that person knows they are being recorded, it definitely inhibits their responses. I have found that to be the case very, very often in related types of investigations, where recording equipment has been used, not in an interview situation like this. When people think they are being taped, whether it be video or just a recording, a voice recording, they tend to be more inhibited.

Senator LEAHY. So, you are saying it is the policy always not to record?

Mr. SIMMONS. It's a general policy. It's not something that is iron clad. I think if an agent had a specific reason to do so, he would be able to get permission to record a conversation.

Senator LEAHY. The news last night, on a matter where the Defense Department leaked to a couple of the news media FBI videotaping and audio taping of a witness in the tragedy on one of our battleships, so there it was done. Obviously, you follow that policy.

My own experience as a prosecutor was that if you want to tape something, you put the tape out there, you talk for a while, you tell the people the tape is there, within three or four minutes the people tend to ignore it and say whatever they are going to say.

If that's your policy, that's the policy that is normally followed, then I make nothing of it here, other than the fact that I think it is a poor policy. I think it would be a lot better for us, we could hear exactly what was said.

Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Are there other questions? Senator Bond?

Senator BOND. Agent Simmons, to your knowledge, was Agent Murphy the agent in charge in Washington on October 9, in order to interview Judge Hastings?

Mr. SIMMONS. He would have been directly in charge of the investigation up there, and he would have been making the decisions in conjunction with his supervisor, Supervisor Special Agent Anthony Amoroso. He would have been the overall supervisor of the case.

Senator BOND. And he was in Washington?

Mr. SIMMONS. Yes, he was in Washington.

Senator BOND. No further questions.

The CHAIRMAN. Are there other questions? Senator Pryor.

Senator PRYOR. Agent Simmons, when you went to Judge Hastings' office or his chambers, did you go there with the intention of only delivering the subpoena, or to also bring back files and information?

Mr. SIMMONS. I anticipated that we would be given the records. It's pretty much standard policy on a subpoena duces tecum for records to be turned over to the agent, rather than the person named on the subpoena to show up before a grand jury. In this particular case, this was a grand jury subpoena. In this particular case, it is just pretty much routine, so I just suspected that they would do that, although they have the option.

Senator PRYOR. When you deliver a subpoena in this way, a subpoena *duces tecum* in this instance, you don't normally take 10 or 11 agents to do this, do you?

Mr. SIMMONS. No, and, in fact, that is not why the 10–11 agents were there. We anticipated approximately six people to be at the judge's chambers. We wanted to interview all of those people. Generally, it's a policy of the FBI to have two agents present when an interview is being conducted. Whatever it may have been, 10–12 agents that went there, went there strictly for interviews, not——

Senator PRYOR. I see.

Mr. SIMMONS. I was going to serve the subpoena, in addition to my interview, but the other agents were not there for that purpose.

Senator PRYOR. That's all, Mr. Chairman. Thank you, Agent Simmons.

The CHAIRMAN. Are there any other questions from the committee?

[No response.]

The Chairman. If not, is there any reason this witness cannot be excused?

[No response.]

The Chairman. The witness is excused. The House will please call its next witness.

Mr. Bryant. The House calls Senora Avery.

The Chairman. Do you, Senora Avery, swear and affirm that the evidence you shall give in the case now pending between the United States and Judge Alcee L. Hastings shall be the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. Avery. I do.

The Chairman. Please be seated.

TESTIMONY OF SENORA AVERY

DIRECT EXAMINATION

Mr. Bryant. Please state your name.

Ms. Avery. Senora Avery.

Mr. Bryant. And where do you reside, Ms. Avery?

Ms. Avery. Annandale, Virginia.

Mr. Bryant. Where are you employed?

Ms. Avery. AT&T, in Upton, Virginia.

Mr. Bryant. And what is your present position there?

Ms. Avery. My present position is assistant staff manager.

The Chairman. Could you just pull that chair up a little closer to the microphone, please, or the microphone closer to the chair, one or the other? Thank you.

Ms. Avery. OK.

Mr.Bryant. Would you tell the members of the committee in what position you were employed in October 1981?

Ms. Avery. In October 1981, I was a supervisor in the HOBIS office in Richmond, Virginia area. That is the Hotel Billing Information Center for hotel-motel services.

Mr. Bryant. For what company?

Ms. Avery. For C&P of Virginia, at that time.

Mr. Bryant. That's the telephone company?

Ms. Avery. Yes, that's the telephone company.

Mr. Bryant. OK, I think you said that the division of AT&T that you worked for is called HOBIS, is that correct?

Ms. Avery. That's right, HOBIS, H-O-B-I-S is the acronym for HOBIS, which stands for hotel billing information system.

Mr. Bryant. How long did you work in one capacity or another for HOBIS?

Ms. Avery. In one capacity or the other, I worked in the HOBIS since 1976, up until October of 1988.

Mr. Bryant. As a result of that work, are you familiar with the operation of HOBIS equipment in use in Washington, DC in October of 1981?

Ms. Avery. Yes, I am.

Mr. Bryant. Is the HOBIS system that is in use now different from that which was used in October 1981?

Ms. Avery. No, it is not.

Mr. Bryant. I would like to ask you to explain to the committee what the HOBIS system is and how it operates.

Ms. **Avery**. The HOBIS system is a computerized system that provides "service message details of long-distance calls that are placed by a guest at a hotel over a private-line dedicated circuit, that circuit then connects to a teleprinter that is located at the premises of a hotel."

Mr. **Bryant**. Now, if a hotel guest placed a long-distance telephone call in 1981 from his room, explain how that would take place with the HOBIS system.

Ms. **Avery**. OK. If a guest made a long-distance call from the room, the guest would dial the access code of the hotel, a zero, then they would dial the long-distance telephone number. At that time, that call would go into what we call the long-distance or the regular zero operator. That operator then would answer the call and at the same time on her console she will receive a—well, she receives two lamps. One lamp would indicate to her that the call is a hotel call, the other lamp indicates that she has to get the guest's room number. At that time, she requests the room number from the hotel guest and keys it into her equipment and releases the call from her position or console.

When the call is completed, the call detailed message then comes in from the long-distance operator computer over the dedicated private line and transmits that data back to the hotel and then it is printed at the hotel over the hotel teleprinter. At the same time, that same message details of that call that was just placed is transmitted over from the long-distance operator computer equipment to the HOBIS or the hotel billing information center equipment for storage.

Mr. **Bryant**. All right. What does the print in the hotel that is receiving information from the HOBIS system produce?

Ms. **Avery**. That particular printer produces what they call a voucher or the actual call details of the call that was placed by the guest in the hotel.

Mr. **Bryant**. And what is done with that information?

Ms. **Avery**. That information is then posted at the hotel to the guest's bill.

Ms. **Bryant**. All right. What information is transmitted automatically by HOBIS?

Ms. **Avery**. The information that is transmitted automatically by HOBIS is the actual call details of the, you know, the call that was placed by the guest, the room number, the date of the call, the length of the call, the actual duration of the call, the cost of the call and the called number, and also it has on it what they call a voucher number in a sequential format that lets you know when the ending of that conversation was, and that voucher number is printed on each individual call message detail records throughout a 24-hour period. Each one has a separate number.

Mr. **Bryant**. OK. You stated before that the long-distance operator punched in or keyed in the room number of the guest room before the call is connected. Unless the caller is charging the call to a credit card or calling collect or calling the call to some other telephone, can the call be connected without the guest room number being provided to the system?

Ms. **Avery**. No, it cannot, it would fail.

Mr. **Bryant**. Now, I would like to show you Exhibit 140 and ask if you can identify these documents.

Ms. **Avery**. Yes, I can identify these documents. These are the actual voucher messages that are printed over the teleprinter that is located on the premises of the hotel.

Mr. **Bryant**. Are these the HOBIS slips from the L'Enfant Plaza Hotel?

Ms. **Avery**. Yes, they are the——

Mr. **Anderson**. Objection, Mr. Chairman. This witness is not competent to testify to that. She works for AT&T and she has testified that these would have been printed on a system at the hotel itself.

The **Chairman**. The objection will be overruled. The witness can testify as to her knowledge about what these slips are, to the extent that she has knowledge or has a point of view on the subject.

Mr. **Bryant**. Can you tell from the information on the slips which day these vouchers produced by the HOBIS machine in the hotel are from?

Ms. **Avery**. Yes, I can, and the date is 10-9, October 9, 1981.

Mr. **Bryant**. Now, were all the calls in that exhibit completed on October 9, 1981?

Ms. **Avery**. In previously reviewing these vouchers, no, they were not. They were all—all of them were completed on October 9th, except for the last two vouchers in this package here.

Mr. **Bryant**. All right. And when were they completed?

Ms. **Avery**. They were completed on October 8th.

Mr. **Bryant**. The previous day?

Ms. **Avery**. The previous day, yes.

Mr. **Bryant**. OK.

At this time, the House would offer into evidence House Exhibit 140.

The **Chairman**. Is there objection to the exhibit?

Mr. **Anderson**. Objection, for lack of foundation. I will not pursue the objection, if I am told that Mr. Blocker is going to appear as a witness. I will pursue it if I am told he is not.

Mr. **Bryant**. Well, he is going to appear.

The **Chairman**. Mr. Blocker will be a witness. The exhibit will be admitted.

[The document referred to was marked House Exhibit No. 140 and was received in evidence.]

Mr. **Bryant**. I would like to direct your attention to House Exhibit 141, which is on the easel, and ask you if you would identify what House Exhibit 141 is.

Ms. **Avery**. House Exhibit 141 is actually the first voucher message of the package that I have here, which is Voucher No. 1 or the very first call that was completed on October 9th.

Mr. **Bryant**. All right. Is it an enlarged version of one of the HOBIS vouchers, that is, the first HOBIS voucher in Exhibit 140?

Ms. **Avery**. Yes, it is, it is the very first one.

Mr. **Bryant**. We ask at this time that House Exhibit 141 be admitted into evidence.

The **Chairman**. Is there objection?

Mr. **Anderson**. No.

The CHAIRMAN. The exhibit will be admitted.

[The document referred to was marked House Exhibit No. 141 and was received in evidence.]

Mr. BRYANT. Now, turning your attention to the enlarged coy, Ms. Avery, would you please explain to the committee the meaning of each of the items of information on the voucher, starting on the left side, with the notation "001"?

Ms. AVERY. OK. The "001" is the actual sequential number that was printed for the first call that was completed on October 9th. As I have stated before, each voucher message that actually printed over the teleprinter at a hotel is assigned a sequential number within a 24-hour period, and that period begins at 12:00 a.m., and throughout the day, as each message comes in, the sequential number is assigned to it upon completion of the call.

Mr. BRYANT. Now, your last phrase, I want to ask you to explain that. The number is assigned to it because of what?

Ms. AVERY. The number is assigned to it because of the ending of the conversation or completion of the call, the number is assigned throughout the day.

Mr. BRYANT. Now, what about the notation "E"?

Ms. AVERY. The notation "E" is what we refer to as a buffer number. That buffer number is assigned from the long-distance operator computer. That really does not have anything to do with the hotel, it just determines which buffer actually sent the message over the private-line dedication circuit, and they have several and they all have like A, B, C, D, E, so whichever buffer sent the information is actually what is printed on this.

Mr. BRYANT. Next, you will find the letters WLL.

Ms. AVERY. WLL is actually the acronym that was assigned by the local telephone company or C&P at that time to each individual hotel, and at that particular time L'Enfant Plaza was actually assigned by C&P the acronym WLL, and we did that so that the operators could readily identify the hotel, without having to know the telephone number. If they saw WLL, they readily knew that this was L'Enfant Plaza.

Mr. BRYANT. The next figure, 10-9, what is that?

Ms. AVERY. That is the date that the long-distance call placed by the guest was completed.

Mr. BRYANT. And the next figure I think is 15216.

Ms. AVERY. Yes, that's 15216, that is the room number of the guest that actually placed the long-distance call.

Mr. BRYANT. And the next figure?

Ms. AVERY. The next one is actually the initial or the start time of the conversation.

Mr. BRYANT. 23:58?

Ms. AVERY. Yes, 23:58.

Mr. BRYANT. Now, is that like military time?

Ms. AVERY. That is military time, which would equate to 11:58 p.m.

Mr. BRYANT. OK. And the next notation is 0006.

Ms. AVERY. That is the length of the conversation or the actual minutes talked.

Mr. BRYANT. So, how long would that conversation have lasted?

Ms. **Avery**. That conversation lasted for 6 minutes. They started talking, like I say, at 11:58, and they completed, which is after 12:00 o'clock, so it equated to 6 minutes.

Mr. **Bryant**. The next notation?

Ms. **Avery**. The next notation is the actual charge, which was $3.01.

Mr. **Bryant**. And finally, the last notation?

Ms. **Avery**. The last one is the actual called number that was called or dialed by the guest.

Mr. **Bryant**. Finally, there is a vertical stamp on the right-hand end of the voucher. What is that?

Ms. **Avery**. The vertical stamp that is on the right-hand of the voucher is actually a stamp that was placed there by the hotel.

Mr. **Bryant**. All right.

Mr. Chairman, may we recess for a House vote?

The **Chairman**. Is there a House vote at this time?

We will recess for the 10 minutes needed for a House vote.

[Short recess.]

The **Chairman**. The committee will reconvene.

Representative Bryant, would you continue with the rest of your examination, please?

Mr. **Bryant**. Yes, Mr. Chairman.

Ms. Avery, can you explain to the committee why a call which was begun at 23:58 or, that is to say, 11:58 p.m., has the first number of that day, that is, of October 9th?

Ms. **Avery**. Yes, I can. What happens is that the voucher number is only assigned to the completed call upon the duration or the completion or the end of the conversation. So, when this particular call ended, which started at 11:58 p.m. on October 9, the actual completion of the call actually was on October 9th. The guest talked 6 minutes, so that would make it at 12:04 a.m., which was when the call was actually completed, so therefore the first voucher for that particular day was assigned to this particular call, because it was the first call that was completed on October 9, even though it started on October 8th.

Mr. **Bryant**. Now, please look at the second voucher of Exhibit 140, the one that has 0002 as its sequence number. When was that call begun?

Ms. **Avery**. That call actually was begun at 12:00 o'clock a.m., on October 9.

Mr. **Bryant**. OK. And how long did it last?

Ms. **Avery**. It lasted for 8 minutes.

Mr. **Bryant**. So, when would it have ended?

Ms. **Avery**. It would have ended at 12:08 p.m.—I mean 12:08 a.m., excuse me.

Mr. **Bryant**. All right.

Ms. **Avery**. Which is October 9.

Mr. **Bryant**. And the next HOBIS slip that you have, the next voucher that you have is 0003?

Ms. **Avery**. Yes.

Mr. **Bryant**. When did it begin?

Ms. **Avery**. This particular voucher, the call began at 11:48 a.m.—I'm sorry, p.m., on October 8.

Mr. **Bryant**. October 8th?

Ms. AVERY. On October 8th, that's correct. And the duration of the call was 23 minutes, which means that the call actually, you know, went into October 9th, and that is when it was posted on the teleprinter located at the hotel.

Mr. BRYANT. It lasted 23 minutes?

Ms. AVERY. Yes, it lasted for 23 minutes.

Mr. BRYANT. So, it ended at 12:11 a.m.?

Ms. AVERY. Exactly.

Mr. BRYANT. All right. Call No. 3, then, began before either call No. 1 or No. 2.

Ms. AVERY. That's correct.

Mr. BRYANT. Again, why does it bear the later sequential number?

Ms. AVERY. Because the guest talked longer on the call, so therefore the actual completion of the call surpassed the times of voucher numbers 1and 2, which made it the third call for that particular day for that hotel.

Mr. BRYANT. The third call to be completed?

Ms. AVERY. To be completed, right.

Mr. BRYANT. Would there be a separate voucher for each long-distance call made from a guest's room made on that day?

Ms. AVERY. Yes, it would be a separate voucher for any day, for each call that was made.

Mr. BRYANT. And would each voucher be sequentially numbered, according to its order of termination?

Ms. AVERY. Yes, it would.

Mr. BRYANT. Now, before coming here today to testify, did you have an opportunity to review Exhibit 140, which you have in your hand——

Ms. AVERY. Yes, I did.

Mr. BRYANT [continuing]. To determine if any vouchers appeared to be missing for the sequential numbering?

Ms. AVERY. Yes, I did.

Mr. BRYANT. All right.

Ms. AVERY. I did have a chance prior to testifying today to review all of the vouchers, and I did find that there were some vouchers that were missing, and the voucher numbers that were missing were voucher Nos. 17, 36, 52, 57, 69, 75 and 76.

Mr. BRYANT. Are the vouchers with the sequential numbers which come before and after each of these missing vouchers in the exhibit?

Ms. AVERY. Yes, they are.

Mr. BRYANT. All right. Now, by examining the starting time and the duration of those calls which bracket the missing vouchers, that is to say which came before and came after the missing vouchers, are you able to determine approximately when those missing calls must have been completed?

Ms. AVERY. Yes, I can determine that from looking at these vouchers.

Mr. BRYANT. Now, referring to one of the missing vouchers, No. 36, please explain how you can figure out from the vouchers that precede and follow No. 36, approximately when call No. 36 must have ended.

Ms. AVERY. OK. Voucher No. 35, the actual initial start time or beginning of that conversation was at 2:09 p.m., and the guest talked for 1 minute, which means that the actual completion of this call was at 2:10 p.m. Voucher 36 is the one that's missing, so on voucher 37, the call actually started, or the initial start time of the conversation was at 2:24 p.m.; the duration or the length of time talked was for 4 minutes, which means that the guest completed the call at 2:28 p.m., so that would let me know that voucher No. 36 had to have been completed between 2:10 p.m. and 2:28 p.m.

Senator RUDMAN. Mr. Chairman, could I ask a question at this point, because I am a little concerned?

The CHAIRMAN. Senator Rudman.

Senator RUDMAN. I think if we are going to follow this particular sequence, I think we all have to understand something. The voucher numbers are supplied sequentially as to the time the call is completed for each telephone or for the whole hotel?

Mr. BRYANT. For each room.

Senator RUDMAN. That was not clear in that last question, because it was 209, it was call No. 36 or 35 from a particular room?

Mr. BRYANT. Senator, every guest call in the hotel, then, writes a voucher.

Senator RUDMAN. Per room, each room has its own voucher register?

Mr. BRYANT. Well——

Senator RUDMAN. Why do you not ask the witness?

Mr. BRYANT. All right. I will take her back to her earlier testimony since she began.

Ms. AVERY. OK.

Mr. BRYANT. Explain to the Senator, when a guest makes a phone call from the hotel room, what happens. Start with the operator and come forward.

Ms. AVERY. OK. Starting with the——

The CHAIRMAN. Counsel, I think this could be shortcutted somewhat. As I understand it, the exhibit which she is testifying from contains all of the vouchers for the L'Enfant Plaza Hotel for that date. Is that accurate?

Ms. AVERY. That is correct.

The CHAIRMAN. That is not just those from that particular room, it is those from the hotel?

Ms. AVERY. Exactly.

Senator RUDMAN. Mr. Chairman, is the testimony, then, that this lady is holding in her hand all the telephone calls made from the L'Enfant Plaza on that day?

Ms. AVERY. That were charged to a guest room.

Senator RUDMAN. And a particular room?

Ms. AVERY. No particular room, no.

Mr. BRYANT. As opposed to having charged it, for example, to your home phone or to a credit card?

Senator RUDMAN. So, in other words, what she is holding in her hand represents all the calls that were charged to a room, any room in the L'Enfant Plaza Hotel on that day.

Ms. AVERY. Any room. Exactly.

Mr. **Bryant**. Yes, but the room number is on the voucher. The answer to your question is yes, but it is important to emphasize the room number is on the voucher, and you can see which room.

Senator **Rudman**. And how is that determined, counsel, the room number, by the operator?

Ms. **Avery**. Yes.

Mr. **Bryant**. Well, let me ask her to testify again to that.

Ms. **Avery**. OK. Yes, that is determined by the operator. As I stated earlier, when a guest actually makes a long-distance call from the room, they would dial an access code, a zero, and the long distance number they wanted to call. Then that call would actually go in to the long-distance operator. That operator then would answer the call at that time. On her console she would get two lamps and one was a hotel lamp that notified her that this was a hotel call, and another guest key lamp that actually let her know that she is responsible for receiving the room number, and that is when she would request the room number of the guest that is making the long-distance call and key that number into the equipment.

Senator **Gorton**. I understand. But what if the guest gives the wrong room number?

Senator **Rudman**. That is my next question. What if I give Senator Gorton's number, and I say it is 2152, but I am in room 2150?

Ms. **Avery**. The operator has no way of knowing that.

Senator **Rudman**. Exactly. That is my question. You have answered both my questions, counsel. Thank you.

Ms. **Avery**. She only keys in what she hears.

Mr. **Bryant**. But once again, these are all the vouchers from the L'Enfant Plaza for calls made charged to any room that day.

Senator **Rudman**. All the others would have been charged to credit cards or call collect.

Mr. **Bryant**. That is correct.

Ms. **Avery**. That is correct, yes.

Mr. **Bryant**. Now, you just explained to the panel here how you can look, how you can determine at what time a call that would have been noted on a missing voucher came in by looking at the voucher before it and the voucher after it.

Ms. **Avery**. That is correct.

Mr. **Bryant**. Let me ask you this question: Can you tell from these records when call No. 36 was begun, that is, when the call on a missing voucher was begun?

Ms. **Avery**. Not from the records that I have here. I have no way of determining when the actual call, you know, the guy—no.

Mr. **Bryant**. On a missing voucher?

Ms. **Avery**. Oh, on a missing voucher? On a missing voucher, no.

Mr. **Bryant**. Only when it ended.

Ms. **Avery**. Yes. I can determine when it ended, but not when it began.

Mr. **Bryant**. All right. Can there be more than one call on a missing voucher?

Ms. **Avery**. No, it cannot.

Mr. **Bryant**. Why is that?

Ms. **Avery**. Because there is only one call printed per voucher.

Mr. **Bryant**. Now, I would like to ask you, does Exhibit 140 reflect any long-distance calls that ended between 2:29 p.m. and 4:00 p.m., on October 9th?

Ms. **Avery**. Again, I have previously, you know, looked at this package and my answer to that is yes, and that was voucher No. 38 and voucher No. 39 that were completed between 2:29 and 4:00.

Mr. **Bryant**. Would you tell us where the phone call that is noted on voucher No. 38 was to?

Ms. **Avery**. Yes. That call was to area code 215, which is in the Pennsylvania area.

Mr. **Bryant**. All right. And the second call that was made between 2:29 p.m. and 4:00 p.m.?

Ms. **Avery**. OK. That was voucher 39, and that call was placed to the 201 area, which would be New Jersey.

Mr. **Bryant**. All right. Is there any break in the sequence of the vouchers during the period 2:29 p.m. to 4:00 p.m.?

Ms. **Avery**. No, it is not.

Mr. **Bryant**. Now, given the fact that there are no breaks in the sequence of numbered vouchers; that is to say, there are no vouchers missing for the calls which ended between about 2:20 and 4:00 p.m., could any other calls from a guest room at the hotel have ended between those times, other than the calls which you just mentioned, the area code 201 and 215?

Ms. **Avery**. No, it could not have.

Mr. **Bryant**. Does Exhibit 140 reflect any calls being placed to the area code of Miami or the Fort Lauderdale area on October 9, 1981?

Ms. **Avery**. Yes, there is call No. 7—or voucher No. 71.

Mr. **Bryant**. And what time was that call made or finished? What time did that call finish, according to the voucher?

Ms. **Avery**. The initial start time of that call was at 10:00 o'clock p.m., and they talked for 8 minutes, so the call was completed at 10:08 p.m.

Mr. **Bryant**. And what was the room number?

Ms. **Avery**. The room number for that particular call placed that day was 12189.

Mr. **Bryant**. All right. And there were no other calls reflected in the exhibit that I have handed you, to the area code of Miami or the Fort Lauderdale area, on October 9, 1981. Is that correct?

Ms. **Avery**. No, there is not.

Mr. **Bryant**. All right. Does Exhibit 140 reflect that any long-distance calls were placed from rooms 11239, 11231, or 11229?

Ms. **Avery**. No, it did not.

Mr. **Bryant**. On October 9, 1981?

Ms. **Avery**. No. No, it was not any in those rooms.

Mr. **Bryant**. Tell the committee, if you would, Ms. Avery, what does the notation "F" at the right end of the phone number on the HOBIS voucher mean when it appears?

Ms. **Avery**. The "F" actually lets me know that that call was either a foreign call or an overseas type call. The "F" stands for "Foreign."

Mr. **Bryant**. All right. Would the fact that it is a foreign call or an overseas call explain why some numbers in the voucher have less than the normal 10 digits or have prefixes that are not used in the United States?

Ms. **Avery**. Yes, that is correct.

Mr. **Bryant**. We would pass the witness at this time, Mr. Chairman.

The **Chairman**. Is there cross-examination of the witness?

Mr. **Anderson**. Yes, there is.

Morning, Ms. Avery.

CROSS EXAMINATION

Ms. **Avery**. Good morning.

Mr. **Anderson**. Let me see if I understand the system.

First of all, there has been somewhere in the record some use of the term HOBIC and HOBIS. Am I correct in my understanding that it was in March, 1981 that AT&T changed computers?

Ms. **Avery**. That is correct.

Mr. **Anderson**. And so we introduced a new hotel billing information system computer in March of 1981, is that right?

Ms. **Avery**. Yes. We changed from a center to a system.

Mr. **Anderson**. OK. And in fact, if I understood you, the long-distance calls from hotels that were participating in this system were initiated from the hotel and then just went into the standard long-distance telephone operator center?

Ms. **Avery**. That is correct.

Mr. **Anderson**. And those operators who are the same ones who would take a long-distance call that I might make from here or from a pay phone or anywhere where the operator is handling these calls?

Ms. **Avery**. Exactly.

Mr. **Anderson**. Now, you testified that on those hotels that were participating had an acronym, I think in the case of the L'Enfant Plaza, WLL?

Ms. **Avery**. That is correct.

Mr. **Anderson**. And that there were two lights that would go on, on a long-distance operator's console when a call was coming out of the hotel. Did I——

Ms. **Avery**. That is right.

Mr. **Anderson**. Now, why was it necessary for the operator to know the acronym or to have that displayed for her?

Ms. **Avery**. Well, as I explained earlier that the acronym was assigned to each hotel, that was a part of that system by the long-distance company. The hotels themselves had nothing to do with the assigning of the acronym. To make it easy for the operator to retrieve the information or the data from the computer, we actually came up with actually keying in the acronym, which was a three letter that was assigned to the hotel, as opposed to the ten-digit telephone number or the seven-digit number.

Mr. **Anderson**. Now, why did the operator have to retrieve that data?

Ms. **Avery**. Well, the operator may have had to retrieve the data for any given reason that may have been given to her by the hotel. They may have wanted to know any different thing, the number——

Mr. **Anderson**. Why would that—I had thought that, after these calls were done, the information was transmitted to the hotel billing information system, which is a different computer. Am I right about that?

Ms. **Avery**. That is correct.

Mr. **Anderson**. Now, why would a long-distance operator whose, I take it, primary function is channeling calls and doing that, why would they need to know the acronym?

Ms. **Avery**. That particular operator does not need the acronym. The operator that I am referring to that needed the acronym was actually the operator that was located in the HOBIS center, which is an entirely different center, you know, altogether.

Mr. **Anderson**. Then I am confused. Why was it important that the console of the long-distance operator contain the acronym? I am just trying to understand the function of that step of the transaction.

Ms. **Avery**. OK. The long-distance operator did not obtain the acronym, only the room number. She never asked——

Mr. **Anderson**. Right, but I thought you testified earlier—and I do not mean to cut you off—that the acronym was displayed in the long-distance center. That when those two lights came on, if I were——

Ms. **Avery**. No, no, no. What I explained was that, when the two lamps came on, one was a hotel lamp that notified her that she had a hotel call, the other one was a guest lamp that actually let the operator know she had to require the room number before she could complete the call, not the acronym.

Mr. **Anderson**. OK. But then again, just so I understand, a hotel lamp comes on and the operator says, "Well, here is a call coming from a hotel."

Ms. **Avery**. Exactly.

Mr. **Anderson**. In all circumstances, the operator did not have to ask for the guest room?

Ms. **Avery**. No. If the call was a credit card call or collect, no, she did not have to have the room number.

Mr. **Anderson**. Well, how prior to that time—I mean, if I am calling from my hotel room back in 1981 and I want to make a credit card call or collect call——

Ms. **Avery**. Right.

Mr. **Anderson** [continuing]. How does the operator know before I instruct her?

Ms. **Avery**. The guest key would not be lit.

Mr. **Anderson**. But how would she—I mean—bear with me, I truly am mechanically illiterate.

Ms. **Avery**. OK. No problem.

Mr. **Anderson**. I am in my hotel room, and I dial whatever access code they have given me, I punch in zero, I dial my home.

Ms. **Avery**. OK.

Mr. **Anderson**. At this point, I know in my heart of hearts that I intend to call collect. How does the light for the guest room know at the long-distance billing center whether to light up so you ask for my room number or not?

Ms. **Avery**. Well, when the operator actually answers the call, if the guest key—well, let me make a correction. The guest key is lit once she asks the customer for the room number. Normally, what they would do is say, "I want to place a credit card call." Then what she does is release the guest key.

Mr. ANDERSON. So, there is a mechanical function when an operator could release a guest key and then it goes into a different billing system, wherever that is?

Ms. AVERY. That is correct.

Mr. ANDERSON. Now, if the lights come on together and the operator asks and puts in the room number, that call, I take it, is initially teletyped back to the hotel on its completion?

Ms. AVERY. Exactly.

Mr. ANDERSON. And then how does it get over into the hotel billing system itself?

Ms. AVERY. Someone at the hotel actually posts it. You mean to the guest bill?

Mr. ANDERSON. No, I am talking about you have the long-distance system computer which, I take it, handled these calls as they were going out and back to the hotel. Then I thought I understood you to say there is somewhere else, there is the new system, the HOBIS system where you physically were present in 1981.

Ms. AVERY. There is. That is right. The actual long-distance operator computer, the long-distance, the regular zero operator equipment actually transmits that data over a private line dedicated circuit to the hotel over their teleprinter. That is how the hotel actually gets a record of the call that is made.

Mr. ANDERSON. You are misunderstanding my question.

Ms. AVERY. Did I?

Mr. ANDERSON. I want to know how does AT&T, or how did C&P at this time, keep a record for its own purposes, for billing, or for whatever? What happened to the data inside the company, as we said?

Ms. AVERY. OK. OK. Well, both the long-distance operator record, also there is a data base there and the long-distance operator computer that actually keeps a record in the HOBIS.

Mr. ANDERSON. Can we take it a step at a time?

How long does that data base last?

Ms. AVERY. The HOBIS data base that actually does the storage of the call, actually, that is sent out on a daily basis. The billing system for C&P, once that information is sent on a daily basis, they actually kept that information, say, maybe from six months to a year.

Mr. ANDERSON. To see if I understand, it is reasonably important so bear with, me because I must understand.

Ms. AVERY. Yes, I will.

The CHAIRMAN. Mr. Anderson, I hate to interrupt at this crucial moment, but we are at 12:00 o'clock. I have advised the committee that we would recess at 12:00, and we will do so at this time.

I would plan to reconvene for taking testimony at 1:45, and the committee would please return at 1:30, so we can meet in closed session for a few moments before.

Mr. ANDERSON. Just before you do, it was just delivered to me, I do have copies of this tentative order list for us, and it poses a couple of questions. I give it to you and the managers so you can look at it.

The **Chairman**. We would appreciate it if you could give that to our counsel and to the managers. We would appreciate that.

The committee stands in recess.

[Whereupon, at 12:01 p.m., the committee recessed, to reconvene at 1:45 p.m., this same day.]

AFTERNOON SESSION

The **Chairman**. The committee will reconvene.

I believe we were in the middle of cross-examination by Mr. Anderson. Would you continue with that cross-examination, please?

Mr. **Anderson**. Ms. Avery, I think when we were talking this morning, you had described that initially the HOBIS system is a call placed from a hotel on the systems. It's just like any other long-distance call. It then goes into the then C&P long-distance center.

Ms. **Avery**. Right.

Mr. **Anderson**. And if I understood you, two lights go on, if the system is working correctly, alerting the operator that it is a long-distance call from a hotel, and that operator intervention is required?

Ms. **Avery**. Exactly.

Mr. **Anderson**. At that point, the operator intervenes and takes down credit card, collect, whatever it is, punches in whatever information he or she deems appropriate into the system, and then hits a release button.

Ms. **Avery**. Correct.

Mr. **Anderson**. And at that point, it is pure mechanics from that point on, is that correct?

Ms. **Avery**. That's correct.

Mr. **Anderson**. And then, at the end of the call, the system itself sends back over a dedicated line something to a teletype at the hotel?

Ms. **Avery**. That's correct.

Mr. **Anderson**. Now, the HOBIS system had been introduced in 1981, is that correct?

Ms. **Avery**. Yes, in 1981, that's correct. Yes, March 1981.

Mr. **Anderson**. And I take it AT&T, and before it Chesapeake & Potomac Telephone Company, were continuously trying to upgrade and improve its services?

Ms. **Avery**. That's correct.

Mr. **Anderson**. So, though, we are still today, in 1989, relying on a HOBIS system——

Ms. **Avery**. That's correct.

Mr. **Anderson** [continuing]. It's been improved in whatever ways AT&T could figure out to improve it since then?

Ms. **Avery**. That's correct.

Mr. **Anderson**. And let me probe just for a moment.

What was your position in 1981?

Ms. **Avery**. In 1981, I was a supervisor in the HOBIS Center.

Mr. **Anderson**. Now, as a supervisor in the HOBIS Center, what generally were your duties?

Ms. **Avery**. My general duties were to supervise operators. I had so many operators assigned to me at that time.

I also was the manager that was in charge, you know, of the entire office. You know, from time to time, I had duties to do with, you know, running of the office, actual office running itself.

Mr. ANDERSON. And what is your position today?

Ms. AVERY. My position today is assistant staff manager.

Mr. ANDERSON. So, it would be fair that you have come up through the ranks at AT&T to a management position in the personnel side of managing long-distance centers and operators?

Ms. AVERY. That's correct.

Mr. ANDERSON. Are you now or were you then—did you ever come up through the Computer Systems Division of AT&T? Had you been trained in hardware and software systems by AT&T?

Ms. AVERY. Yes. Prior to opening up the HOBIS Center in 1981, I was one of the managers that was assigned to the Task Force that actually opened up the HOBIS Center responsible for learning the entire computer system itself.

Mr. ANDERSON. And in connection with that, were you involved in the design of the software? Are you a programmer, or have you had experience in programming?

Ms. AVERY. No, I'm not a programmer. No, I'm not.

Mr. ANDERSON. And have you had experience in computer hardware, how one selects, designs and constructs that—have you—do you understand the point I'm making? Are you a computer specialist or are you a management specialist?

Ms. AVERY. No, I'm not a computer specialist. I'm a management specialist.

Mr. ANDERSON. And are you aware today, or were you aware in 1985 when you were first contacted, of what the kind of hardware, the telephone equipment at the L'Enfant Plaza was in 1981?

Ms. AVERY. Yes, I was.

Mr. ANDERSON. What was the configuration of that equipment?

Ms. AVERY. At that time, what they had was what we called the—let me see if I can recollect.

We had two types. We had a 43 teleprinter, is what most hotels had, and some have the old standard, what we call the 33 receive-only type, the floor model. The 43 was actually desk type, black and white.

I'm not too sure what type L'Enfant had, but they had to have one or the other, because those were the only two we were using at that time.

Mr. ANDERSON. Well, when you're talking about the old type, the printer type, can you tell by looking at the HOBIS slips themselves and the way they're imprinted which type you would have had?

The Chairman. Let me just interrupt and ask if you would either lean into the microphone or pull it closer to you, one way or another. Some members of the committee are having difficulty hearing you.

Ms. AVERY. OK.

The Chairman. Thank you.

Mr. ANDERSON. From the manner in which the lines are typewritten on the slips, is that a slip where you could tell if the L'Enfant Plaza had the old type or the new type in 1981?

Ms. AVERY. No, I couldn't tell from the manner of the way it was printed. It's that they have to make sure that whatever type they had, it had to be able to interface with the—well, the C&P Telephone Company equipment at that time.

Mr. **Anderson**. When you talk about interfacing with it, did hotels have an option so long as the equipment was—I think the word is compatible, they could use their own type of equipment for the printouts?

Ms. **Avery**. That's correct.

Mr. **Anderson**. The only test was could it interface with your equipment?

Ms. **Avery**. Exactly. They actually had to be able to receive that particular format that we sent——

Mr. **Anderson**. I understand.

Ms. **Avery**. OK.

Mr. **Anderson**. Some of my colleagues, indeed some of the people on my staff, understand how MacIntosh and PC and all of that stuff work. I don't claim to have any notion other than do the papers come out.

I think what you're telling us is that, although you are far more sophisticated now, you are not a computer system specialist. All you have to know is that the two things have to plug together so it could print. The hotel had to have something that would receive messages from AT&T equipment and print it.

Ms. **Avery**. That's correct.

Mr. **Anderson**. Now, in 1981, had you ever visited the L'Enfant Plaza?

Ms. **Avery**. No, I had never visited the L'Enfant Plaza.

Mr. **Anderson**. And had you ever served in the Customer Service Division of AT&T, where you called upon hotels and sold them your service or your equipment or that kind of thing.

Ms. **Avery**. No, I didn't. You mean in 1981?

Mr. **Anderson**. Yes.

Ms. **Avery**. Not in 1981, no. I didn't sell the equipment at all.

Mr. **Anderson**. And did you sell the service? I mean were you in the division of persons who AT&T tried to go out and sell a hotel, gee, you want to use our HOBIS system?

Ms. **Avery**. No.

Mr. **Anderson**. Now, do you recall when the first time you were contacted in connection with this matter was?

Ms. **Avery**. It was in 1985.

Mr. **Anderson**. And that would have been when you were called to Atlanta——

Ms. **Avery**. That's right.

Mr. **Anderson** [continuing]. To talk and discuss these rhetorics before a committee of judges?

Ms. **Avery**. That's correct.

Mr. **Anderson**. Now, let me come back, if I can, I thus far in my mental imaging have a hotel which has some teletype equipment and dedicated lines. That's the first phase. We then have a long-distance center, which is where all long-distance calls go through.

Ms. **Avery**. That's right.

Mr. **Anderson**. With its two lights and its operator. But the HOBIS system itself is in the third location, is it not?

Ms. **Avery**. That's correct.

Mr. ANDERSON. And when the calls are reported in the long-distance billing center, am I correct that the tape on which that information is electronically stored is taken over to the HOBIS Center in the first instance, is that correct?

Ms. AVERY. The tape that actually records or does the actual billing is not taken to the HOBIS Center. That information is sent directly to the billing center itself.

Mr. ANDERSON. Was it sent to the billing center by the HOBIS Center or by the long-distance center?

Ms. AVERY. By the long-distance center.

Mr. ANDERSON. All right. Then, what is the HOBIS Center, what function does it serve?

Ms. AVERY. The HOBIS Center is basically a storage. We did not do billing. We did actual storage. And what we did on a daily basis is actually sent all records that were stored into the HOBIS Center at the end of a billing cycle. Okay. All information that ended in that particular billing cycle at 12:00 o'clock, a.m., was actually retrieved, and what we called an archive tape was then sent to the billing center to match it. The actual information came from the long-distance operator computer.

Mr. ANDERSON. All right. And then did you generate a printout at the HOBIS Center?

Ms. AVERY. Yes, we did.

Mr. ANDERSON. And to whom was that sent?

Ms. AVERY. That was sent to the Mechanized Investigation Center.

Mr. ANDERSON. And was a copy of that sent to the customer?

Ms. AVERY. No, not a copy sent to the customer, no.

Mr. ANDERSON. But when you say it was sent to the Mechanized Investigations Center, that would be so there would be someone there if a customer had a question, there would be a base on which one could compare it?

Ms. AVERY. Exactly, after the billing cycle had passed. It will be called post-billing.

Mr. ANDERSON. Once the billing cycle had passed, there were two places in AT&T that had records from which one could have checked, if I understand you correctly. One would be the billing center itself, and they're the ones who generated the bill that would have been sent to the hotel. And I take it they kept a copy of that for some period of time.

Ms. AVERY. That's correct.

Mr. ANDERSON. And the other one would have been the Mechanized Investigative Center, which had a copy of your records?

Ms. AVERY. That's correct.

Mr. ANDERSON. And if I understand, those were stored in microfiche form?

Ms. AVERY. Yes, that was.

Mr. ANDERSON. And for how long did those two centers keep their comparative records?

Ms. AVERY. I don't really know offhand how long, but approximately, from all of the billings that I had with them, you know, in trying to retrieve data for any type of customer, if I had to go to either the billing or the Mechanized Investigation Center.

Generally, they were sent or they would have that information for a period from six months to a year, could have had it longer.

Mr. **Anderson**. So, if this went on in October of 19—if we were focusing on some bills at the L'Enfant Plaza in October 1981, with any luck they might have had them through October 1982, is that correct?

Ms. **Avery**. That's correct, to my knowledge.

Mr. **Anderson**. And going much beyond that, it would be unlikely those records would have existed?

Ms. **Avery**. It's possible.

Mr. **Anderson**. Now, I take it that AT&T maintains these two additional copies because they think that serves a legitimate purpose, don't they?

Ms. **Avery**. That's correct.

Mr. **Anderson**. And those are both fairly expensive systems, aren't they?

Ms. **Avery**. Yes, they are.

Mr. **Anderson**. And so, for its business purposes, AT&T thought it was useful to keep two separate copies of the information, in addition to whatever went back over the telephone line to the hotel?

Ms. **Avery**. That's correct.

Mr. **Anderson**. Now, I wonder if I might direct your attention to what has now I think been admitted as House Exhibit 140, that pack of slips, and specifically I wonder if you could look at slip 39 and slip 40?

Ms. **Avery**. OK.

Mr. **Anderson**. Now, if I am reading these slips correctly, am I correct that the call evidenced by slip 49 on October 9th began at 2:54 p.m.?

Ms. **Avery**. That's correct. That's 39 we're looking at, right?

Mr. **Anderson**. Thirty-nine, yes.

Ms. **Avery**. OK.

Mr. **Anderson**. And there was not a further call shown in these records. There's another call that comes in at 3:10, that's slip 40, was when the next call began that went through the system? I'm looking at 40 now.

Ms. **Avery**. Yes, that's 4:10.

Mr. **Anderson**. And then slip 41 suggests that there was no—the next call was at 4:14.

Ms. **Avery**. That's correct, 4:14 p.m.

Mr. **Anderson**. There was a gap, if I understand, if I'm reading this correct, from 2:54 in the afternoon until 4:10 in the afternoon, is that correct?

Ms. **Avery**. That is correct.

Mr. **Anderson**. Now, did you know when you were called in 1985, or do you know now how large the L'Enfant Plaza Hotel is?

Ms. **Avery**. I realized this was one of our larger properties, yes, at that time, and even today.

Mr. **Anderson**. And would AT&T have any records about how fully booked it was in 1981, on any particular date?

Ms. **Avery**. Not really, not unless there was a convention that was coming, and we were notified ahead of time, you know, to prepare for something like that.

Or during our busy season, we knew that, like during summertime, that a lot of hotels had a lot more guests that stayed there, so we actually had enough operators.

Mr. Anderson. Let me for the moment assume that I were, for some reason, perhaps an auditor from Loew's Corporation or something, who looked at the HOBIS records for a given day, and said, holy smoke, you know, there's no calls during this whole long—from 2:15 in the afternoon until 4:10. That seems strange to me. I take it if, in October, November and December 1981, I wanted to check that, I could have called you or someone and gone over and looked at your records to see if there was a problem?

Ms. Avery. Yes, that's correct.

Mr. Anderson. And I could have done that almost any time up to a year after the fact, with any luck, is that correct?

Ms. Avery. When you said done that——

Mr. Anderson. Up until October 1982, with any luck I could have come back in if I were doing an annual audit or something, I could ask about it.

Ms. Avery. Oh, yes. Yes.

Mr. Anderson. And you would have the records to either satisfy me that everything had gone well, or tell me, oops, we got a problem. Those records would have been available then, wouldn't they?

Ms. Avery. Yes, in the Mechanized Investigation Center, but not the HOBIS center.

Mr. Anderson. And I take it C&P then and AT&T now readily complies with subpoenas issued by grand juries or the Government or the courts?

Ms. Avery. That's correct.

Mr. Anderson. But I take it if these HOBIC slips were first produced in February of 1983 by the Government and shown to the defendant, there's no way the defendant probably could have even gotten the basis for comparison back as early as February of 1983, is that correct?

Ms. Avery. Not to my knowledge.

Mr. Anderson. And I take it, when you were asked in 1985 for records, you had to tell Mr. Doar, whomever, that AT&T and Chesapeake & Potomac's records are long since gone, there's no way to check, didn't you?

Ms. Avery. That's what I told them, yes.

Mr. Anderson. Now, you've been with AT&T and companies long enough. Do you know that there's some kinds of equipment which have the automatic numbering device right in the typewriter itself, so that each transaction is just like an automatic paginator, it clicks up one ratchet, is that correct?

Ms. Avery. That's correct.

Mr. Anderson. And you don't know what kind of teletype equipment, whether it was the old model or the new model or something that interfaced with AT—was physically in the L'Enfant Plaza on October 19th?

Ms. Avery. Not offhand, but I know we only used one or the other at that time.

Mr. Anderson. I thought you said the hotel had the option itself of buying equipment, so long as it could be made to interface with yours?

Ms. **Avery**. Well, that is a true statement, yes, but I know that, at that time, most hotels only had one or the other.

Mr. **Anderson**. But you don't know at that time what the L'Enfant Plaza had?

Ms. **Avery**. Exactly.

Mr. **Anderson**. Now, I heard you this morning—it was very helpful—explain that there are several numbers which seem strange to the ordinary eye with foreign calls.

When Mr. Doar called you and the five judges examined you back in Atlanta in 1985, did you provide that explanation there; do you recall? Did they ask you about those numbers?

Ms. **Avery**. I think they did, yes. I think I do recall them asking me about the "F" at the end of the number.

Mr. **Anderson**. And in 1985 when you were called, there was no way you could produce any further records. The records that would have existed in 1982, they weren't available any more, were they, the things that you had sent to the Mechanized Investigation division or the things you kept in the HOBIC Center yourself? Those had been destroyed by then, hadn't they?

Ms. **Avery**. By 1985, yes.

Mr. **Anderson**. And there's no way now we could call them up from anywhere in the wonderful world of AT&T?

Ms. **Avery**. Not to my knowledge, I don't think.

Mr. **Anderson**. Thank you, ma'am.

The **Chairman**. Is there redirect examination of this witness?

REDIRECT EXAMINATION

Mr. **Bryant**. Yes, Mr. Chairman.

Ms. Avery, late in the course of cross-examination, you were asked by Mr. Anderson about the fact that, from 2:54 to 4:00 o'clock there appear to be no vouchers indicating calls were completed between 2:54 and 4 o'clock, is that correct?

Ms. **Avery**. I thought what he was asking me was the length of time that a call was placed. It was directly between voucher No. 39 and voucher No. 40, that between 2:54 p.m. and 4:10, that there was only one call placed at that time.

Mr. **Bryant**. Let me ask the question directly.

Exhibit 140 is a reflection of calls which have been charged to the room, is that correct?

Ms. **Avery**. That's correct.

Mr. **Bryant**. So, if there's a gap, or, that is to say, if there's a period of time without a voucher, it does not mean that there were not calls being made from the rooms in the hotel, does it?

Ms. **Avery**. No, that does not mean that at all. Calls could have been made, yes.

Mr. **Bryant**. And where would they have been charged to, those calls?

Ms. **Avery**. They could have been charged to credit card, third numbers, and other type of billing, or just maybe didn't get through, for whatever reason.

Mr. **Bryant**. For the benefit of the committee, let's go project one fundamental, and state once again what Exhibit 140 is, the stack of papers that you have there.

Ms. **Avery**. OK. The exhibit that I hold in my hand, what this actually is is the sequential vouchers, calls that were actually completed. OK. And upon the determination of the call, this information is transmitted to the hotel, but again, it's only completed data that is actually charged to a hotel guest, that we received a record of the call in the long-distance operator's office or the zero operator computer.

Mr. **Bryant**. And it refers to all calls made from the hotel and charged to the room on October 9th, is that correct?

Ms. **Avery**. That's correct, all calls.

Mr. **Bryant**. So, if a person testified that they had made three phone calls from the hotel, and testified that they had charged those phone calls to the room, there would have to be a voucher for those calls, just like the vouchers in Exhibit 140, is that correct?

Mr. **Anderson**. Objection to the use of the word "testified." Counsel is inviting this witness to express her opinion on one of the Articles. There's no—she has neither the expertise nor the foundation to do that. She's made her evidence. That's a leading question.

The **Chairman**. I'll sustain the objection, and just ask counsel to rephrase the question to ask the witness if she has an opinion about a set of circumstances and not about the state of the evidence before the committee.

Mr. **Bryant**. Well, Ms. Avery, if a person said that they had made three phone calls and charged it to their room, there would have to be a voucher, just like the vouchers in Exhibit 140, would there not?

Mr. **Anderson**. Objection. Leading. That's a would you not. This is redirect. Counsel is arguing through the witness.

The **Chairman**. The objection is sustained. The question is leading. If counsel could just ask the witness her opinion, without suggesting the answer to her.

Mr. **Bryant**. Mr. Chairman, I don't want this witness' opinion. I'm asking how the HOBIS system operates and asking that if a person made a phone call and claimed they charged it to the room, is it correct that there would have to be a voucher reflecting that took place. It's not a leading question. It's not a request for opinion.

Mr. **Anderson**. It's a repetitive question. It is leading.

The **Chairman**. I think it's a request—as last stated, I think it's a request for her opinion as to what the vouchers would reflect, and I think it can be answered.

Go ahead and respond to the question.

Mr. **Bryant**. If a person testified that they made one phone call or more than one phone call—let me back up and say it another way. If a person said, in any setting, said that they made a phone call or more than one phone call from a hotel and charged it to their room, there would have to be a voucher, would there not, produced by the HOBIS system to show that they made a phone call from the hotel?

Ms. **Avery**. Correct.

Mr. **Bryant**. And charged to their room, is that correct?

Ms. **Avery**. That's correct.

Mr. **Bryant**. Unless they charged it to a credit card or to their home phone, is that correct?

Ms. **Avery**. That is correct.

Mr. **Bryant**. If they did change their minds and said, well, I didn't make it from the hotel room, I didn't charge it, that is to say I didn't—if they changed their minds and said I didn't charge it to the hotel room, I charged it to my credit card or I charged it to my home phone, there would then have to be a record to the credit card or to the home phone, is that correct?

Mr. **Anderson**. Objection. This witness hasn't been qualified for credit card or other billings, and this is beyond the scope of my cross. It is argumentative. Counsel simply makes these arguments.

The **Chairman**. The objection will be overruled. The witness can give her opinion as to what the records would reflect.

Mr. **Bryant**. The question again was, if a person said they charged it to their room, but then later said, no, I didn't either, I must have charged it to my house, my home phone, or I must have charged to my credit card, then there would be a telephone record of that call having been charged to the credit cards or to the home phone, isn't that correct?

Ms. **Avery**. That is correct.

Mr. **Bryant**. OK. Ms. Avery, if a call had been charged to the wrong room number, a person called from the hotel, calling from the hotel, wishing to charge it to their room, and somehow the operator had made a mistake and charged it to the wrong room number, there would still be a voucher, would there not?

Ms. **Avery**. Yes, there would still be a voucher.

Mr. **Bryant**. It would simply be charging it to the wrong room number, is that correct?

Ms. **Avery**. That is correct.

Mr. **Bryant**. Does Exhibit 140, a stack of vouchers which you have there in your hand, reflect that any calls were placed to the area code of Miami or Fort Lauderdale from the L'Enfant Plaza Hotel and charged to their room on October 9, 1981?

Ms. **Avery**. Could you repeat that again, please?

Mr. **Bryant**. Does Exhibit 140, which is the stack of HOBIC vouchers which you have in your hand, reflect that any calls were placed from the L'Enfant Plaza Hotel and charged to the room, to the area code of Miami or to Fort Lauderdale on October 9th, 1981?

Ms. **Avery**. Yes, the answer to that is yes.

Mr. **Bryant**. And what time was that call made?

Ms. **Avery**. That call was made at 10 o'clock, p.m.

Mr. **Bryant**. 10:00 p.m., is that correct?

Ms. **Avery**. That's correct.

Mr. **Bryant**. And that's the only call in the stack of HOBIS vouchers which you have which reflects a call made at any time on October 9th, 1981, to the area code of Miami or Fort Lauderdale, from the L'Enfant Plaza Hotel and charged to the room, is that correct?

Ms. **Avery**. That is correct.

Mr. **Bryant**. Thank you. I have no further questions.

The **Chairman**. Is there recross-examination?

RECROSS EXAMINATION

Mr. **Anderson**. Ms. Avery, let me try a couple things again. I take it, AT&T maintains those backup records in the Mechanized Investigation Unit of the HOBIS center for a purpose, is that correct?

Ms. **Avery**. That is correct.

Mr. **Anderson**. And I take it, in whatever capacity, as an audit or otherwise, if I came across what appeared to me to be a suspicious gap in the sequence of my HOBIS slips, I could go to you and compare records, so long as I did it within six months or a year, am I correct on that?

Ms. **Avery**. Yes, that's correct.

Mr. **Anderson**. And if I noticed, in the course of a day's printout that, given all the credit cards and other kinds of calls, there appeared to be a gap that ran for about an hour and 20 minutes or thereabouts, and that seemed to me unusual, at any time up until maybe as late as October 1982, I could have come over to your center and said can I see your copies, your printouts and your computer records, and we could have found out; we could have discovered something about that, couldn't we?

Ms. **Avery**. Yes, if you were concerned about it.

Mr. **Anderson**. And if it became a matter of crucial concern—I'm looking over there at a chart which you can't see—the period between about 2:50 in the afternoon until 4:10 on the afternoon of October 9th, 1981, at any time up until October 9th, 1982, we could have answered the question about whether there was something malfunctioning or something wrong about that gap, couldn't we?

Ms. **Avery**. Yes, we could have.

Mr. **Anderson**. But after those records were destroyed, we're stuck with those few little pieces of paper that someone bothered to collect early, aren't we?

Ms. **Avery**. That's correct.

Mr. **Anderson**. Now, besides bearing a House exhibit number, does that set of papers bear any other number of identification on it? Is there another label?

Ms. **Avery**. Well, there's some writing on it. Is that what you're talking about?

Mr. **Anderson**. May I approach the witness, Your Honor?

The **Chairman**. Yes, you may.

Mr. **Anderson**. I have no further questions, Your Honor.

The **Chairman**. I have no questions of this witness.

Do any of the members—Senator Rudman.

EXAMINATION BY THE COMMITTEE

Senator **Rudman**. I have one question.

Ms. Avery, this system was introduced into hotels in March 1981?

Ms. **Avery**. That's from one system to the other, a different system that we called HOBIS, from the HOBIC system at that time. The system had already been in place. We just upgraded it.

Senator **Rudman**. This iteration of the system was March?

Ms. **Avery**. That's right.

Senator **Rudman**. Did you have any complaints from hotels about the system?

Ms. **Avery**. None whatsoever. It was a better system at that time.

Senator **Rudman**. So, there were no problems that hotels were having with their tracking of their phone records?

Ms. **Avery**. None whatsoever, because we provided better service with the new computerized system.

Senator **Rudman**. Well, I understand that, Ms. Avery, but it's a very critical bit of testimony. You know, I can tell you that all of us have had trouble with the phone company, where we get billed for things we didn't call, and sometimes they're lucky enough not to get billed for calls that we did make, but I just want to know whether or not you had hotels, a very few complaints, a lot of complaints, any complaints? Did anybody ever get to you while you were in that position and say we don't think we're recouping all of our costs? That's my question. I just want to know, is this system perfect, and you didn't have any failure?

Ms. **Avery**. No, I am not saying the system is perfect. We did have calls from the hotel, but not necessarily calls about the system, but maybe complaints about calls that they may have not received for a guest or did receive for a guest that maybe was billed to a wrong number, and that is why the system was designed so we could do investigative-type work after the calls had been placed.

Senator **Rudman**. So, you could go back to your mechanical investigation unit and check to see what that was at that point normally, because normally a guest would get the bill and immediately be able to see that they did not make a call to Las Vegas for $400 and say that is not my call, and then you could go to the mechanical investigative unit. They could check it out and they could come back and say that you are right, that that call was made from some place else. Is that what you are talking about?

Ms. **Avery**. That is correct.

Senator **Rudman**. All right. But I guess what I am saying is, were there instances where some of these systems might not operate properly at some gaps? I am just asking the question, because it is important evidence.

Ms. **Avery**. I understand. Are you asking me whether or not the computer may have failures or something?

Senator **Rudman**. Whether or not there was a failure—you had evidence, you had information, you were in a management position that someone said to you from one of the hotels with the HOBIS system that evidently we are having problems with the system, we did not get a group of calls that we think that guests made that we are getting charged for. I mean, did that ever happen? They get their bill once a month, and obviously, I suppose that management would compare what they recouped to what HOBIS says guests charged. That is my question.

Ms. **Avery**. That is correct, yes. We did get questions like that.

Senator **Rudman**. You did. Did you get a lot of questions on them?

Ms. **Avery**. Not necessarily, no.

Senator RUDMAN. Just give me an idea. In a normal month, how many inquiries would you get from hotels using the HOBIS system in this area for C&P, in 1981, that there were problems with the HOBIS system? How many complaints would you get? That is my question.

Ms. AVERY. When you are saying problems with the HOBIS Center——

Senator RUDMAN. Reporting——

Ms. AVERY [continuing]. Reporting center, itself, within a given month, I would say that maybe one or two.

Senator RUDMAN. All right. Thank you very much.

The CHAIRMAN. Senator Specter.

The VICE CHAIRMAN. Ms. Avery, based on your own experience, is there anything unusual in having a midafternoon gap of an hour and 15 minutes where no calls were charged to a room at a hotel like the L'Enfant Plaza?

Ms. AVERY. No, it is not. It is not at all unusual.

The VICE CHAIRMAN. Have you ever discovered that, in checking the HOBIS system against, say, the AT&T backup system, that calls were missed?

Ms. AVERY. You are saying the HOBIS Center with the AT&T backup system, I guess you mean the billing system, is that what you are referring to?

The VICE CHAIRMAN. Yes.

Ms. AVERY. I am trying to think of all of the investigative-type work that, you know, that I have done for the customer, whether or not I actually went to the mechanized investigation center to actually, you know, answer a question such as that, but I don't recall.

The VICE CHAIRMAN. Is the system dependent on human error? For example, is it possible that a long-distance call would be missed entirely if the operator made a mistake or forgot to write it down?

Ms. AVERY. Is it—could you repeat the question again?

The VICE CHAIRMAN. Is it possible that a call would be missed, a long-distance call would be missed by human error, if the operator simply forgot to write it down?

Ms. AVERY. The call would not be missed. It may not have been billed to the guest's record, you know, at the hotel at the completion of the call, but the hotel would probably have been billed for the call at the end of the month when they got their actual telephone bill.

The VICE CHAIRMAN. It would have been caught somewhere?

Ms. AVERY. Yes.

The VICE CHAIRMAN. OK. Thank you very much.

The CHAIRMAN. Are there other questions from members of the committee?

[No response.]

The CHAIRMAN. Now, is there any reason this witness cannot be excused?

[No response.]

The CHAIRMAN. You are excused, Ms. Avery. We appreciate your testimony very much. And we are ready for the next witness.

Mr. Anderson.

Mr. ANDERSON. Mr. Chairman, if I could just raise a point and make an objection, I will abide by the ruling the Chair is comfortable with.

I had understood that Mr. McIver and Ms. Golar-Williams had been flown in to Washington in anticipation of their testimony. I understand the House now wishes, as the committee had ruled, to submit them by prior testimony. I will have to recall them, and it seems to me unfortunate for these witnesses that they shall have to go home and return during our case, since both of them were anticipated to be brief.

I bring it to your Chair since they are here. I renew my objection to the prior testimony and think we ought to proceed. But I did want to make it on record that people who had been brought into Washington I think ought to be able to, in light of the Chair's earlier ruling about not recalling witnesses, ought to be permitted to produce their evidence one trip to Washington and not have to go forth and come back.

We will happily abide by the ruling of the Chair on this point, but I did want to bring it to the committee's attention before they left town.

The CHAIRMAN. The position that the Chair has taken and the committee has taken up till now is that, once a witness is called and sworn and taken through direct examination, that cross-examination of that witness will be allowed to go forward, even though it is beyond the scope of the direct, so that we would not have the problem of having to put witnesses on the stand twice. I do not believe it is appropriate for the committee and the Chair to require House counsel or counsel for Respondent to put certain witnesses on the stand when they do not desire to do that.

Mr. ANDERSON. All right. I just said—our position on prior testimony is known, and I understand the Chair's rule on that.

This just seemed to me out of human consideration for some people who have traveled a long way from their homes to be here who will now go back and come back again.

The CHAIRMAN. Would the House call its next witness?

Mr. BRYANT. The House calls Albert Blocker.

The CHAIRMAN. Mr. Blocker, would you raise your right hand, please?

Do you, Albert Blocker, swear and affirm that the evidence you shall give in the case now pending between the United States and Judge Alcee L. Hastings shall be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. BLOCKER. Yes, sir.

The CHAIRMAN. Please be seated.

TESTIMONY OF ALBERT H. BLOCKER

DIRECT EXAMINATION

Mr. BRYANT. Would you state your name for the committee?

Mr. BLOCKER. Albert H. Blocker.

Mr. BRYANT. And where are you employed, Mr. Blocker?

Mr. BLOCKER. Lowe's L'Enfant Plaza Hotel.

Mr. BRYANT. And what is your position at the L'Enfant Plaza?

Mr. BLOCKER. Comptroller.

Mr. **Bryant**. How long have you held that position?

Mr. **Blocker**. Sixteen years.

Mr. **Bryant**. What are your basic responsibilities as comptroller at that hotel?

Mr. **Blocker**. I am in charge of all of the financial records, expenses, income, and records of the hotel.

Mr. **Bryant**. Are you responsible for the billing records?

Mr. **Blocker**. Yes, sir.

Mr. **Bryant**. Are you also the custodian of records for the hotel generally?

Mr. **Blocker**. Yes, sir.

Mr. **Bryant**. Mr. Chairman, I would now offer into evidence Stipulation No. 175.

The **Chairman**. Is there objection to that stipulation?

Mr. **Anderson**. No objection.

The **Chairman**. It will be admitted into evidence.

[Stipulation No. 175 was received in evidence.]

Mr. **Bryant**. Stipulation 175 is that on October 9, 1981, Judge Hastings was registered for room 11239 of the L'Enfant Plaza Hotel.

Now, Mr. Blocker, showing you Exhibit 130, would you identify this document for the committee?

Mr. **Blocker**. This is a room folio for room 11239 for October 9, 1981.

Mr. **Bryant**. Are there any—that is a room folio for what person?

Mr. **Blocker**. Judge Hastings.

Mr. **Bryant**. OK. Are there any charges reflected on that bill?

Mr. **Blocker**. Yes, sir.

Mr. **Bryant**. Would you tell us what they are?

Mr. **Blocker**. A valet charge and two room service charges.

Mr. **Bryant**. Can you tell, from examining House Exhibit 130, whether those charges were paid at the time of checkout?

Mr. **Blocker**. They were not paid.

Mr. **Bryant**. All right. Showing you now House Exhibit 217, would you identify that document?

Mr. **Blocker**. It is a room folio for Mr. William Borders, room 11229 and 231.

Mr. **Bryant**. Are there any charges reflected on Mr. Borders' bill?

Mr. **Blocker**. No, sir.

Mr. **Bryant**. Now, showing you House Exhibit 131, would you tell the committee what this exhibit is?

Mr. **Blocker**. It is a room folio under the name of Mr. Frank Mitchell for a three-room suite, 11229, 231, 239.

Mr. **Bryant**. Are those rooms adjoining, that is to say, are they a suite?

Mr. **Blocker**. Yes, sir.

Mr. **Bryant**. Do you know why Mr. Mitchell's name is on this folio?

Mr. **Blocker**. Because he was a guest at the hotel.

Mr. **Bryant**. What charges are reflected on House Exhibit 131, the bill for the suite?

Mr. BLOCKER. Room, $280; tax, $28; tax $2.40; long distance, $2.45; and miniature bar charge of $153.96.

Mr. BRYANT. All right. What was the date of the long distance telephone call reflected on the bill for the suite, House Exhibit 131?

Mr. BLOCKER. October 10, 1981.

Mr. BRYANT. October 10th, is that correct?

Mr. BLOCKER. Yes, sir.

Mr. BRYANT. Mr. Chairman, I would now like to offer into evidence House Exhibits 130, 131, and 217.

The CHAIRMAN. Is there objection to those exhibits being admitted?

Mr. ANDERSON. Not to Judge Hastings. The relevance of the other ones, I am not quite—I do not understand.

The CHAIRMAN. Would counsel explain the relevance of the two exhibits that do not relate to Judge Hastings' room?

Mr. BRYANT. These were adjoining rooms, Mr. Chairman, and as a result of that, we need to show the expenses on all of them.

The CHAIRMAN. They were adjoining rooms also reserved for Judge Hastings?

Mr. BRYANT. Well, for Judge Hastings and Mr. Borders.

The CHAIRMAN. Judge Hastings and Mr. Borders.

Is there objection to these, based on that representation?

Mr. ANDERSON. Could we have the numbers once more?

Mr. BRYANT. Exhibits 131, 217, and 130.

Senator PRYOR. Mr. Chairman, I am afraid I missed a point there. Are we looking or have we introduced into evidence that I missed the room of a Mr. Mitchell and is this——

The CHAIRMAN. Would counsel respond to that? There was a statement by the witness that some of these rooms were reserved for Mr. Mitchell.

Mr. BRYANT. But, Mr. Chairman, Mr. Mitchell, as we understand it, paid the bill.

The CHAIRMAN. For all of the rooms being discussed?

Mr. BRYANT. That is correct. That he was a guest is, in our view, arguable. The suite was reserved for Mr. Borders and for Mr. Hastings. As you know, Mr. Borders was arrested and Mr. Hastings left town. Mr. Mitchell is the individual who came along and paid the bill.

The CHAIRMAN. Does that satisfy Senator Pryor's question?

Senator PRYOR. Did Mr. Mitchell have a room on one of the exhibits we are putting in?

Mr. BRYANT. Mr. Mitchell did not have one of the rooms, but Mr. Mitchell's name is reflected on one of the folios. In fact, the name of someone else is scratched out and his name is written in, and he ended up paying the bill.

Mr. ANDERSON. I am sorry, Mr. Chairman. I have not heard what Mr. Bryant is testifying to in evidence yet, and I do not see Mr. Mitchell——

Senator PRYOR. I may have thrown Congressman Bryant off, Mr. Chairman, and I apologize. I will withdraw all questions on——

The CHAIRMAN. Representative Bryant, could this witness testify as to his understanding of the relevance of this or the meaning of this bill that involves Mr. Mitchell as to what that, how that relates to the other two bills?

Mr. **Bryant**. Mr. Hastings admits—did an individual named Mitchell reflected on the exhibit—I believe it is Exhibit—help me if you would?

Mr. **Blocker**. One hundred thirty-one.

Mr. **Bryant**. One hundred thirty-one. Did he pay the bill for the entire suite?

Mr. **Blocker**. Yes.

Mr. **Bryant**. I offer that.

The **Chairman**. Is there still objection?

Mr. **Anderson**. I will object on relevance and foundation, Mr. Chairman.

The **Chairman**. The objection is overruled. The exhibits will be admitted.

[The documents referred to were marked as House Exhibit Nos. 130, 131, and 217, and were received in evidence.]

Mr. **Bryant**. Showing you now what has previously been introduced as House Exhibit 140, do you recognize these items?

Mr. **Blocker**. Yes.

Mr. **Bryant**. Would you tell the committee what they are?

Mr. **Blocker**. They are the long-distance vouchers for October 9, 1981, the charges that were posted that day.

Mr. **Bryant**. OK. Are these HOBIS slips? Would that terminology apply to them as well?

Mr. **Blocker**. Yes.

Mr. **Bryant**. OK. Are these vouchers—in particular, let me ask you which HOBIS slips are these, that is to say, for which day?

Mr. **Blocker**. These are the charge—these are the HOBIS slips that were posted, marked October 9, 1981.

Mr. **Bryant**. Did there come a time when you were subpoenaed to produce the HOBIS slips for the L'Enfant Plaza Hotel for October 9, 1981?

Mr. **Blocker**. Yes, sir.

Mr. **Bryant**. In what setting was that?

Mr. **Blocker**. At the trial for Judge Hastings.

Mr. **Bryant**. The criminal trial for Judge Hastings?

Mr. **Blocker**. Yes.

Mr. **Bryant**. And are these the same documents you produced at that time?

Mr. **Blocker**. Yes.

Mr. **Bryant**. Have you had an opportunity to review the items in House Exhibit 140?

Mr. **Blocker**. Yes.

Mr. **Bryant**. Are there any vouchers missing from House Exhibit 140, that is, were there any long-distance calls completed on October 9, 1981, by your hotel guests for which there is no voucher in this exhibit?

Mr. **Blocker**. Yes.

Mr. **Bryant**. How many?

Mr. **Blocker**. I think there is three.

Mr. **Bryant**. Well, you recall that there were several missing?

Mr. **Blocker**. Right.

Mr. **Bryant**. Can you explain why a voucher would be missing?

Mr. **Blocker**. Yes. It would be if the cashier or the person who had posted the charges could not find where they were posted that day, and we would investigate it the next day in accounting, or the charge was lost.

Mr. **Bryant**. OK. Why does it happen that charges are not always posted on the same day that they are incurred?

Mr. **Blocker**. The cashier is unable, for whatever reason, one example would be the vouchers only show room numbers and no name, so if you were in room 100 and made a phone call, and then for some reason wanted your room changed and changed to room 200, when the cashier went to post that charge on room 100, there would be no bill to post it on. So we would, in accounting, investigate the next day's room changes and things like that.

Mr. **Bryant**. So she would be confused about which room to charge it to.

Mr. **Bryant**. Is that correct?

Mr. **Blocker**. Right. She would know which room to charge it to, but there would be no bill there to charge it to because you had changed your room.

Mr. **Bryant**. All right. So, then there would be a delay in posting, is that right?

Mr. **Blocker**. Right.

Mr. **Bryant**. So, if any calls made and completed on October 9, 1981, are not included in House Exhibit 140, what would be your explanation?

Mr. **Blocker**. They did not know where to post them on October 9th.

Mr. **Bryant**. OK. Now, directing your attention to the last two HOBIS slips in House Exhibit 140, which are numbered on the left-hand side 51C and 55A——

Mr. **Blocker**. Yes, sir.

Mr. **Bryant** [continuing]. Were those calls made on October 9, 1981?

Mr. **Blocker**. No, they were made on October 8th.

Mr. **Bryant**. All right. But when were they posted to the customer's bill?

Mr. **Blocker**. On October 9th.

Mr. **Bryant**. All right. Aside from the fact that these two slips are included in the group that you produced as the records of all long-distance calls for October 9, 1981, how do you know these two charges were posted on October 9, 1981?

Mr. **Blocker**. From the validation that the posting machine makes on the voucher.

Mr. **Bryant**. Are you talking about the blue stamp?

Mr. **Blocker**. Correct.

Mr. **Bryant**. That is on the right-hand side?

Mr. **Blocker**. Correct.

Mr. **Bryant**. OK. Now, is that stamp part of the HOBIS printout or is that stamp put on there by the hotel?

Mr. **Blocker**. Put on there by the hotel machine, posting machine.

Mr. **Bryant**. OK. Now, therefore is it true those are examples of long-distances charges being posted the day after they were incurred?

Mr. **Blocker**. Correct. Correct.

Mr. BRYANT. All right. And they are vouchers being maintained, nevertheless, in the billings for the day they were posted?

Mr. BLOCKER. Correct.

Mr. BRYANT. Perhaps it would clarify things if you would explain to the committee exactly what procedure is followed when a HOBIS slip is printed out at your telex terminal at the hotel?

Mr. BLOCKER. OK. Approximately once an hour, a cashier would go over to the HOBIS machine, tear off any vouchers that were received in the last hour, go to where the bills are kept, the guest hotel bills, and file those in a, we call it a bucket, where each room has its own bucket, and it would be posted later on in the day.

Mr. BRYANT. OK. Now, again, when is this posting usually done? How often?

Mr. BLOCKER. About every hour.

Mr. BRYANT. You have explained that a voucher may be missing from House Exhibit 140, because it was posted on a later date.

Mr. BLOCKER. Correct.

Mr. BRYANT. Is there any other reason a slip could have been missing from Exhibit 140?

Mr. BLOCKER. The cashier lost it.

Mr. BRYANT. All right. Could another explanation for a long-distance charge not appearing on a guest's bill be that the HOBIS printer broke down and failed to produce a record for a long-distance call made on October 9th?

Mr. BLOCKER. Possible.

Mr. BRYANT. Well, do you have any reason to believe that there was a breakdown like this on October 9, 1981?

Mr. BLOCKER. No.

Mr. BRYANT. Would there be a record at the L'Enfant Plaza if the HOBIS printer had failed on that date?

Mr. BLOCKER. There would be.

Mr. BRYANT. All right. Was there any such record?

Mr. BLOCKER. No.

Mr. BRYANT. If the HOBIS printer had broken down on October 9, 1981, would you have known about it at the time?

Mr. BLOCKER. Yes.

Mr. BRYANT. All right. Showing you House Exhibit 143, I would like to ask you to identify this for the committee?

Mr. BLOCKER. This is a HOBIS voucher from October 10, 1981.

Mr. BRYANT. Beginning at what time? When did the call begin?

Mr. BLOCKER. 1:56 a.m.

Mr. BRYANT. A.m.?

Mr. BLOCKER. A.m.

Mr. BRYANT. From which room?

Mr. BLOCKER. 11229.

Mr. BRYANT. And to what phone number?

Mr. BLOCKER. Area code 212-874-3649.

Mr. BRYANT. Let me show you again House Exhibit 131, the bill folio for the suite of rooms which included Judge Hastings and William Borders.

Mr. BLOCKER. Yes, sir.

Mr. BRYANT. Do you have it there?

Mr. BLOCKER. I have it.

Mr. Bryant. Is the long distance call on House Exhibit 143, which you have just identified, the same call which is included on the bill——

Mr. Blocker. Yes, sir.

Mr. Bryant [continuing]. House Exhibit 131?

Mr. Blocker. Yes, sir.

Mr. Bryant. And can you tell from the HOBIS slip, House Exhibit 143, when that call was placed?

Mr. Blocker. Yes, 1:56.

Mr. Bryant. What time of—morning or night?

Mr. Blocker. A.m.

Mr. Bryant. And what is the date?

Mr. Blocker. October 10th.

Mr. Bryant. Thank you.

I pass the witness.

The **Chairman.** Is there cross-examination?

Mr. Anderson. Yes, Mr. Chairman.

CROSS EXAMINATION

Now, Mr. Blocker, my name is Terry Anderson. I do not think we have had the opportunity to meet before.

Those exhibits in front of you have some additional markings on them, do they not?

Mr. Blocker. Yes, sir.

Mr. Anderson. And what are those?

Mr. Blocker. Which particular——

Mr. Anderson. Well, why don't you pick up the single slip right in front of you?

Mr. Blocker. Yes.

Mr. Anderson. What has that got on it? The labels, tell us what the labels are?

Mr. Blocker. Oh. It says Government Exhibit 4406, IC–78, Exhibit 143 House.

Mr. Anderson. So, I take it, that is one of the records you brought to the trial back in 1983, is that correct?

Mr. Blocker. Yes.

Mr. Anderson. And do you recall being called to that trial?

Mr. Blocker. Yes.

Mr. Anderson. Now, did you bring those records up with you or had you given them to the Government prior to your arrival?

Mr. Blocker. I had given them to the Government prior to arrival.

Mr. Anderson. Do you recall that, at the time you were called, it was during something called the Government's rebuttal?

Mr. Blocker. I do not recall.

Mr. Anderson. Do you recall, when you got on the stand, that Judge Gignoux had to send the jury out because there was a bit of a colloquy?

Mr. Blocker. I do not remember that.

Mr. Anderson. Do you recall hearing Judge Hastings object to the fact that he was just now getting documents that had never been produced in discovery?

Mr. Blocker. Yes.

Mr. ANDERSON. And do you recall that his objection to their calling you, your not having been on their witness list?

Mr. BLOCKER. I do not remember why he objected, but I remember——

Mr. ANDERSON. But you do recall that there had to be a recess so that you could go be interviewed by Judge Hastings briefly? Do you recall that?

Mr. BLOCKER. Yes.

Mr. ANDERSON. And that was the first time he had ever talked to you, wasn't it?

Mr. BLOCKER. Right.

Mr. ANDERSON. The first time you had ever seen him?

Mr. BLOCKER. Right.

Mr. ANDERSON. Now, at the time you gave those exhibits to the Government, did you also give them the hotel's bill for the month of October?

Mr. BLOCKER. No.

Mr. ANDERSON. Now, Ms. Avery testified this morning, the first time I knew it, that if you had had some questions about the omitted call or the other thing, or if a call got miss-punched into the administrative column, or somewhere else, you got a monthly long-distance bill for the entire hotel. Am I correct about that?

Mr. BLOCKER. Correct. Yes, sir.

Mr. ANDERSON. And so you could have, if we had some nervousness about what happened on October 9th, we could have taken those slips and gone back and compared it against the——

Mr. BLOCKER. Phone bill.

Mr. ANDERSON [continuing]. Phone bill?

Mr. BLOCKER. Right.

Mr. ANDERSON. Where is that phone bill right now, Mr. Blocker?

Mr. BLOCKER. Trash.

Mr. ANDERSON. Trash. How long does the L'Enfant Plaza keep its hotel bills?

Mr. BLOCKER. Three years.

Mr. ANDERSON. Three years is the record retention.

Now, did you produce that monthly bill when you were subpoenaed to testify in Atlanta?

Mr. BLOCKER. No.

Mr. ANDERSON. Was it already in the trash?

Mr. BLOCKER. No.

Mr. ANDERSON. Were you asked to?

Mr. BLOCKER. No.

Mr. ANDERSON. It is in the trash now, is it not?

Mr. BLOCKER. Yes.

Mr. ANDERSON. So we do not have your monthly bill, that we could have checked that against?

Mr. BLOCKER. Yes, sir.

Mr. ANDERSON. And you did give these to the Government before you were called to testify?

Mr. BLOCKER. Yes, sir.

Mr. ANDERSON. And you do recall Judge Hastings screaming when you got there saying, "I have never seen these documents before," don't you?

Mr. BLOCKER. Yes.

Mr. **Anderson**. Did you think he did a pretty good job of examining you, after 15 minutes to prepare?

Mr. **Blocker**. He did. I thought he did.

Mr. **Anderson**. And just to confirm that we know, you were called to Atlanta and you testified there, did you not? And the IC numbers that are on these exhibits were things that were put on then. Do you recall that?

Mr. **Blocker**. No. I don't.

Mr. **Anderson**. Well, do you recall when you testified, they would keep showing you something and refer to it as IC-72?

Mr. **Blocker**. No.

Mr. **Anderson**. I am trying to refresh your recollection.

Mr. **Blocker**. OK.

Mr. **Anderson**. And you produced whatever records they asked you to produce at that time?

Mr. **Blocker**. Correct. Yes, sir.

Mr. **Anderson**. Now, there has been some testimony earlier about a shift over from a HOBIC to a HOBIS system. Do you recall in October, 1981 whether you were on the HOBIS or the HOBIC?

Mr. **Blocker**. No.

Mr. **Anderson**. Do you recall that you may have said, when you appeared before the Investigating Committee in Atlanta, you described it as a HOBIC system?

Mr. **Blocker**. No. I did not even know they changed.

Mr. **Anderson**. Well, I heard you today say that it was a HOBIS system. When did you learn that there was a HOBIS versus a HOBIC?

Mr. **Blocker**. I thought they were the same thing.

Mr. **Anderson**. Mr. Chairman, I would ask leave to show the witness two exhibits. Ms. Hochberg has copies. I am no longer quite sure who you would like us to hand them up to so that they could be passed to the committee.

The **Chairman**. Hand them to the clerk, please.

Mr. **Bryant**. Mr. Chairman, we would first like to be able to pass on admissibility before they are passed out to the committee.

The **Chairman**. Are these exhibits that are going to be offered into evidence?

Mr. **Anderson**. Yes. I have no problem giving them to Mr. Bryant.

Mr. **Anderson**. Mr. Blocker, I have put before you what are marked, I hope, Respondent's Exhibit Nos. 46 and 47. Can you recognize those?

Mr. **Blocker**. Yes.

Mr. **Anderson**. What are they?

Mr. **Blocker**. Photocopies of room service checks from the hotel.

Mr. **Bryant**. Mr. Chairman, we would like to have copies of both exhibits. We have been given a copy of only one.

Mr. **Anderson**. I am sorry. Which one do you have?

Mr. **Bryant**. Forty-six.

Mr. **Anderson**. And in addition to Respondent's Exhibit Nos. 46 and 47, do they have any other labels on them?

Mr. **Blocker**. Yes. Government Exhibits 40D and 40E.

Mr. **Anderson**. And I take it those were produced at the trial and introduced in the same sequence with you testifying?

Mr. BLOCKER. Yes. Right.

Mr. ANDERSON. Now, Mr. Blocker, I am going to have to, may have to refresh your recollection here. Ordinarily, those are evidence that from a particular room, someone ordered room service, are they not?

Mr. BLOCKER. Correct.

Mr. ANDERSON. And what room, from what room was the service covered by those slips ordered?

Mr. BLOCKER. 11239.

Mr. ANDERSON. And am I correct in understanding the normal business practice of the hotel is, when an order is phoned in, the cashier who takes it puts it in a time stamper so we know what time it was taken?

Mr. BLOCKER. Correct.

Mr. ANDERSON. And that is the time at which the order was taken would ordinarily be shown on the reverse side, is it not?

Mr. BLOCKER. Right.

Mr. ANDERSON. Mr. Chairman, I will try and work with the House to substitute a double-sided copy. The only one given me has a single side. With the Chair's permission, I will approach the witness and let him refresh his recollection from the testimony he gave in Atlanta, so that he can tell you what time on October 9th these orders were phoned in.

The CHAIRMAN. You may approach the witness.

[Pause.]

Mr. ANDERSON. Mr. Blocker, let me show you, which I have shown to counsel, two pages which I will represent to you is a transcript from the trial in Atlanta, and if you read along, you will find on the second page there is a reference to one of the two exhibits before you.

Mr. BLOCKER. OK.

Mr. ANDERSON. Looking and using the IC numbers there, will you able to tell the Investigating Committee, then, by examining the back of these exhibits, which time either one of them, which time either order was taken?

Mr. BLOCKER. Yes.

Mr. ANDERSON. And which one were you able to tell from the back?

Mr. BLOCKER. IC–76.

Mr. ANDERSON. And what time was that order taken?

Mr. BLOCKER. At 12:58 p.m.

Mr. ANDERSON. So, in the ordinary course of the L'Enfant Plaza's business records, that means that there was someone in room 11239 who phoned in an order at 12:58. Was that a.m. or p.m.?

Mr. BLOCKER. p.m.

Mr. ANDERSON. And that was on October 9th?

Mr. BLOCKER. Yes, sir.

Mr. ANDERSON. Mr. Chairman, I will try and find a double-sided copy to simplify the committee's efforts, but I would move now that those two exhibits be admitted as Respondent's Exhibits 46 and 47.

The CHAIRMAN. Is there objection?

Mr. BRYANT. No.

The CHAIRMAN. Those exhibits will be admitted.

[The documents referred to were marked Respondent's Exhibit Nos. 46 and 47 and were received in evidence.]

Mr. **Anderson**. Was it not also the practice, Mr. Blocker, of the L'Enfant Plaza to charge its customers for local calls?

Mr. **Blocker**. Yes, sir.

Mr. **Anderson**. And those were, I think back then, at 50 cents apiece?

Mr. **Blocker**. Sounds right.

Mr. **Anderson**. I wonder if you would examine the folio for Judge Hastings' room, what is identified as that; are there any local calls reflected on that?

Mr. **Blocker**. No, sir.

Mr. **Anderson**. So, insofar as your records reflect, not only are there no long-distance calls made, but also that customer made no local calls while in Washington?

Mr. **Blocker**. Correct.

Mr. **Anderson**. And that is what the records reflect.

Mr. **Blocker**. Correct.

Mr. **Anderson**. Mr. Blocker, are there any records today from which we could go back and check on local calls?

Mr. **Blocker**. No, sir.

Mr. **Anderson**. Now, those records, if these events occurred in October 1981, would have been available to the Government or anyone with the subpoena power for three years?

Mr. **Blocker**. No. There is—back then there were no records of where local calls were made to.

Mr. **Anderson**. Only the fact that call got punched into the record?

Mr. **Blocker**. Right.

Mr. **Anderson**. But in terms of long distance calls and other matters, there would have been what I think your comptrollers and your auditors call an audit trail?

Mr **Blocker**. Correct.

Mr. **Anderson**. And any concerns we had at any time for up to 3 years we could have all, if we had the subpoena power, gone over to the hotel and satisfied ourselves, couldn't we?

Mr. **Blocker**. Correct.

Mr. **Anderson**. We can't do that today, can we?

Mr. **Blocker**. You can't. Correct.

Mr. **Anderson**. So it is only such records as you provided the Government prior to the trial that are available before us now; is that correct?

Mr. **Blocker**. Right. Yes.

Mr. **Anderson**. And the other records that existed were never asked for on time?

Mr. **Blocker**. Correct.

Mr. **Anderson**. But you did, didn't you, when the Government asked for it, you insisted upon a subpoena? Weren't you? Did you?

Mr. **Blocker**. Yes.

Mr. **Anderson**. Do you recall Judge Hastings making a visit to the hotel, asking for records, in October 1981?

Mr. **Blocker**. No.

Mr. **Anderson**. You don't recall that?

Mr. **Blocker**. No.

Mr. **Anderson**. I take it if Judge Hastings or anyone else walked off the streets and said, "Could we have some records?" you would be reluctant to give them?

Mr. **Blocker**. Correct.

Mr. **Anderson**. Just like the Government, you would have insisted upon a subpoena?

Mr. **Blocker**. Correct.

Mr. **Anderson**. Mr. Blocker, thank you very much.

The **Chairman**. Is there redirect?

Mr. **Bryant**. There is.

REDIRECT EXAMINATION

Mr. Blocker, did you or anybody at the L'Enfant Plaza Hotel receive a subpoena from Judge Hastings asking for the records?

Mr. **Blocker**. No, sir.

Mr. **Bryant**. Thank you. No further questions.

The **Chairman**. Any recross examination?

Mr. **Anderson**. Do you recall that you were subpoenaed by the Government during its rebuttal case at the 1983 trial?

Mr. **Blocker**. No.

Mr. **Anderson**. Do you recall the date on which you were subpoenaed?

Mr. **Blocker**. No.

EXAMINATION BY THE COMMITTEE

The **Chairman**. Let me ask you, Mr. Blocker, I am still a little confused about this House Exhibit 131, which I hope you have in front of you still.

Mr. **Blocker**. Yes.

The **Chairman**. It shows, as I can best read it here, that the three rooms, 11231, 11229, 11239, were all originally reserved for K.R. Shuttleworth. Then there is a line drawn through K.R. Shuttleworth and in its place is written in Mitchell, Frank. Is that right?

Mr. **Blocker**. Yes.

The **Chairman**. And what is your basis for saying that these rooms were reserved in the name of Judge Hastings and Mr. Borders? Is this the same room?

Mr. **Blocker**. I didn't say they were reserved in the name of Hastings. This is a three-room suite, and this is the bill where we posted all the revenue, the room revenue. The other two rooms were for the guests for Mr. Hastings and Mr. Borders. But Mr. Mitchell's name was on the folio that we charged the room revenue to.

The **Chairman**. And you would go back—your practice was to go back and change the name depending upon who paid the bill?

Mr. **Blocker**. Right.

The **Chairman**. Change the name that you had on the folio?

Mr. **Blocker**. Correct.

The **Chairman**. And where does this K. R. Shuttleworth fit in?

Mr. **Blocker**. I don't know. It could be that they typed the wrong name or it could have been the original name of the guest that was supposed to come in, I really don't know, and that Mr. Mitchell came in.

The CHAIRMAN. Now, according to this there was a long distance call placed on October 10th, which cost $2.45?

Mr. BLOCKER. Yes, sir.

The CHAIRMAN. From one of those rooms?

Mr. BLOCKER. From Room 11229.

The CHAIRMAN. You have other records there that tell you that that is the room it was placed from?

Mr. BLOCKER. Yes. I have the telephone long distance voucher.

The CHAIRMAN. And what was the time that that long distance voucher indicates?

Mr. BLOCKER. Eleven—I'm sorry. One fifty-six a.m., on the 10th.

The CHAIRMAN. So that at nearly two in the morning on the 10th someone was in those rooms making a long distance call?

Mr. BLOCKER. Correct.

The CHAIRMAN. And that was charged to the room?

Mr. BLOCKER. Correct.

The CHAIRMAN. That is all I have.

Senator Specter.

The VICE CHAIRMAN. I have no questions. Thank you, Mr. Chairman.

The CHAIRMAN. Are there other questions from the committee? Senator Gorton.

Senator GORTON. Do you remember at this time any particular trouble with the telephone system that you have described here? Were you getting billed by the telephone company for calls which you had not been able to trace to rooms or weren't able otherwise to bill?

Mr. BLOCKER. No, sir.

The CHAIRMAN. Are there any other questions from members of the committee? Any reason this witness—oh. Senator Pryor.

Senator PRYOR. I have one, Mr. Chairman. Hopefully not two.

Mr. Blocker, I am looking at one of the exhibits, I think it is 132. This is the valet list, and it looks that—do you have that before you?

Mr. BLOCKER. No, sir.

Senator PRYOR. Well, it looks that on October 9 Judge Hastings, Room 11239, evidently sent out a suit to be cleaned. They charged $8 in those days. I don't know what they charge now, but anyway.

Mr. BLOCKER. More.

Senator PRYOR. More?

Mr. BLOCKER. More.

Senator PRYOR. Now it has been testified to earlier, or alleged that when Judge Hastings checked out of the hotel or left the hotel he left a suit behind. Do you recall back that long ago if he left this suit or if this suit was in his room or was it still in the pressing operation?

Mr. BLOCKER. I don't recall.

Senator PRYOR. Do you recall anything about that?

Mr. BLOCKER. I don't recall anything now about it.

Senator PRYOR. The other question I have is this Mr. Frank Mitchell. Was he the person that you would hold responsible for the hotel bill?

Mr. **Blocker**. Yes.

Senator **Pryor**. In other words, when Judge Hastings allegedly fled or left the hotel, quickly departed, you didn't think that he was leaving and not paying his hotel room bill at that time; is that correct, Mr. Blocker, or did you know?

Mr. **Blocker**. I—we really wouldn't have known at that time whether he left the hotel or not. If he would have just gone out like any other guest and not come back, we wouldn't have known he left the hotel.

Senator **Pryor**. You weren't looking to Judge Hastings to pay the bill?

Mr. **Blocker**. No, sir.

Senator **Pryor**. Thank you very much.

Mr. **Blocker**. OK.

The **Chairman**. Is there any reason this witness should not be excused?

The **Vice Chairman**. Mr. Chairman, I would like to ask one more question, if I may.

The **Chairman**. Senator Specter?

The **Vice Chairman**. This call was made on October 10th at 1:56 a.m.?

Mr. **Blocker**. Yes, sir.

The **Vice Chairman**. And the number called was 212-974-2649?

Mr. **Blocker**. 874-3649.

The **Vice Chairman**. My copy is rather blurred.

Do we know whose number that was?

Mr. **Blocker**. I don't.

The **Vice Chairman**. Has there been any effort made to determine that, to your knowledge?

Mr. **Blocker**. No. Not to my knowledge.

The **Vice Chairman**. Representative Bryant, has any effort been made to find out what number that is?

Mr. **Bryant**. I am sorry, Senator. My attention was distracted by a pending vote, I didn't hear your question.

The **Vice Chairman**. The question is has any effort been made to determine the number which was called at this——

Mr. **Bryant**. Is that the 212 Area Code number?

The **Vice Chairman**. Yes.

Mr. **Bryant**. I don't know if there has been an effort or not. I can't answer your question without speaking to my staff about it.

The **Vice Chairman**. Well, the question arises as to the circumstances of a call at a time in close proximity to very important events from the room occupied by the respondent, and a 212 area code. It might shed some light or it might not, but that is a question that comes to my mind.

Mr. **Bryant**. Would you repeat the date of the call and the time?

The **Vice Chairman**. It is October 10th at 1:56 a.m.

Mr. **Bryant**. Well, I think that would have probably turned our attention to other things because Borders was in jail and Hastings was in Florida at that time. I can't think of any reason why we would have pursued it, although I don't want to tell the committee it wasn't pursued. I just don't know at this moment.

The **Vice Chairman**. Would you see if somebody did pursue it? And if there is some answer to it, it is, perhaps, unimportant but the question is raised in my mind.

Thank you. Thank you, Mr. Chairman.

The **Chairman**. Any reason this witness cannot be excused?

[No response.]

The **Chairman**. We appreciate your testimony very much, Mr. Blocker. You are excused.

Mr. **Blocker**. Thank you.

The **Chairman**. Is the House in the middle of a vote?

Mr. **Bryant**. Yes, we are, Mr. Chairman.

The **Chairman**. We will recess for a few moments till the House can return.

[Recess.]

The **Chairman**. The committee will reconvene.

Representative Synar, would the House call its next witness, please?

Mr. **Synar**. The House calls Cynthia Rogers.

The **Chairman**. Ms. Rogers, would you raise your right hand, please?

Do you, Cynthia Rogers, swear and affirm that the evidence you shall give in the case now pending between the United States and Judge Alcee L. Hastings shall be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. **Rogers**. I do.

The **Chairman**. Please be seated.

TESTIMONY OF CYNTHIA ANN ROGERS

DIRECT EXAMINATION

Mr. **Synar**. Good afternoon, Ms. Rogers. Let me first of all say how grateful we are, we know you have been waiting around for three days, and, hopefully, we will be through this afternoon.

Please state your full name for the record?

Ms. **Rogers**. Cynthia Ann Rogers.

Mr. **Synar**. Ms. Rogers, if you will scoot all the way up, come on up to the table, get as close to the microphone as you can.

How are you employed, Ms. Rogers?

Ms. **Rogers**. I am employed by New Venture Limited Partnership.

Mr. **Synar**. You are going to have to keep coming up. Yes, lean forward.

Ms. **Rogers**. I am employed by New Venture Limited Partnership.

Mr. **Synar**. OK. Now were you employed as a legal secretary in 1981?

Ms. **Rogers**. I was.

Mr. **Synar**. And for whom were you employed?

Ms. **Rogers**. The law firm of Cobb, Borders and Williams.

Mr. **Synar**. Now was the Borders of that firm William Borders?

Ms. **Rogers**. Yes. William A. Borders, Jr.

Mr. **Synar**. All right. Now, as a legal secretary, did you take phone messages for the lawyers in the firm?

Ms. **Rogers**. Yes, I did.

Mr. Synar. Now what was the routine for taking those messages in the law firm?

Ms. Rogers. When the calls came in they were recorded on message books that had carbon copies to them, and the dates, the person who the call was going to, the time, and any specific message.

Mr. Synar. OK. Let me show you a book which includes what has been marked as Exhibits 197 and 215. Do you recognize this book?

Ms. Rogers. Yes.

Mr. Synar. What is that book?

Ms. Rogers. It is a message book from our office, with the carbon copies, not the originals. Covering—I am sorry. Covering the dates from May 1st through May 7th, on the outside.

Mr. Synar. What were those dates?

Ms. Rogers. May 1st through May 7th.

Mr. Synar. And where did you see that written?

Ms. Rogers. On the outside cover.

Mr. Synar. And in whose handwriting are those dates written on the outside of the cover?

Ms. Rogers. That is my handwriting.

Mr. Synar. All right. Are there page numbers stamped on the pages of the book?

Ms. Rogers. Yes.

Mr. Synar. What year? You said May 1st through May 7th. What year?

Ms. Rogers. I didn't record the year. I assume it is 1981 since that was the time in question.

Mr. Synar. OK. And, as I said, are the pages stamped on the pages of the book?

Ms. Rogers. Yes. That was done, I believe, by someone with the Government team. We don't put page numbers on any of our message books.

Mr. Synar. All right. Now would you please turn to page 567 of that book? Is there a message there "To Bill from Al Hastings"?

Ms. Rogers. Yes.

Mr. Synar. Can you tell who wrote the message?

Ms. Rogers. I did.

Mr. Synar. All right. Is it in your handwriting?

Ms. Rogers. Yes.

Mr. Synar. Now the reference "Bill" refers to whom?

Ms. Rogers. William Borders.

Mr. Synar. And what is the dates on that message?

Ms. Rogers. April 4—April 7.

Mr. Synar. April 7?

Ms. Rogers. Um-hum.

Mr. Synar. Now would you turn back and review the dates of the pages preceding this message?

Ms. Rogers. All of the pages or——

Mr. Synar. All of them.

Ms. Rogers. OK.

Mr. Synar. All right. Now, if you would turn to page 538 and look at the dates on that page.

Ms. Rogers. They are May 4th.

Mr. **Synar**. All right.

Ms. **Rogers**. All of them.

Mr. **Synar**. May 4th?

Ms. **Rogers**. Yes.

Mr. **Synar**. And are all those dates in your handwriting?

Ms. **Rogers**. Yes.

Mr. **Synar**. And are there any dates or messages on the next page, page 539?

Ms. **Rogers**. No. And they are not in my handwriting.

Mr. **Synar**. And those messages are not in your handwriting?

Ms. **Rogers**. No.

Mr. **Synar**. OK. And the page after that, page 540, how are they dated?

Ms. **Rogers**. April 5th.

Mr. **Synar**. All right. Do the pages from 540 through 569 all have April dates?

Ms. **Rogers**. No.

Mr. **Synar**. OK. Which page doesn't?

Ms. **Rogers**. On page 547 they are in both. They are April 5th and also May 4th.

Mr. **Synar**. All right. With that exception, are all of them on April dates?

Ms. **Rogers**. I believe so.

Mr. **Synar**. And what are the dates on page 570?

Ms. **Rogers**. May 7, April 7, and May 7.

Mr. **Synar**. All right. One says April 7th and the other two say May 7th; correct?

Ms. **Rogers**. May 7th. Uh-hum.

Mr. **Synar**. And are all those messages on page 570 in your handwriting?

Ms. **Rogers**. Yes.

Mr. **Synar**. When you started taking messages on a new page, which message slip would you fill out first?

Ms. **Rogers**. Normally, right to left.

Mr. **Synar**. All right. And which would be second?

Ms. **Rogers**. I am not sure what you mean. The two outside right-hand corners would be filled in first normally.

Mr. **Synar**. And then the two inside?

Ms. **Rogers**. And then the two inside.

Mr. **Synar**. All right.

Ms. **Rogers**. Sometimes, if it is early in the morning, though, I will write anywhere on it. Because early in the morning, you know you are going to fill up a page before the end of the day.

Mr. **Synar**. OK. So looking at page 570, what is the date on the message which would have been the first message you took on that page?

Ms. **Rogers**. Well, these message times are at five in the evening, and the first one was to Jimmy at 4:07, at five o'clock to J. Brooks.

Mr. **Synar**. So the first one was April 7th; correct?

Ms. **Rogers**. Right.

Mr. **Synar**. All right. And what is the date on the second message on that page?

Ms. **Rogers**. Right next to it?

Mr. **Synar**. Yes.

Ms. **Rogers**. OK. That is—I had started to write April 7th and I scratched through it and put May.

Mr. **Synar**. May 7th?

Ms. **Rogers**. May 7th.

Mr. **Synar**. Now you started out with a different day, and then you scratched that out; correct?

Ms. **Rogers**. Yes.

Mr. **Synar**. Now based on your review of this message book, Ms. Rogers, including the cover, which you looked at before, and the messages between page 540 and 569 with April dates, are they correctly dated?

Ms. **Rogers**. I am sorry. Give me the page numbers again.

Mr. **Synar**. All right. Based upon your review of the message book including the cover, the messages on page 540 through 569 with the April dates, are they correctly dated?

Ms. **Rogers**. No. I think they should be transposed to May. But the days are correct. I think the month is what was incorrect.

Mr. **Synar**. OK. Thank you very much.

Now, Ms. Rogers, shifting your attention to the fall of 1981, and in particular to the middle of September, do you recall that Mr. Borders went to Las Vegas around that time?

Ms. **Rogers**. Yes. I believe he went to attend a fight.

Mr. **Synar**. To attend a fight?

Ms. **Rogers**. Right.

Mr. **Synar**. Do you recall which fight it was?

Ms. **Rogers**. No.

Mr. **Synar**. Was it a major fight?

Ms. **Rogers**. Yes.

Mr. **Synar**. OK. Was it usual for Mr. Borders to attend major fights?

Ms. **Rogers**. Yes, it was usual. He attended a lot of major sporting events, so it was not unusual about that. It was the usual practice.

Mr. **Synar**. So it was the usual practice to attend such championship fights.

Now, Ms. Rogers, did Mr. Borders ask you to keep secret the fact that he was going to that fight?

Ms. **Rogers**. I can't remember him ever asking me to keep anything secret.

Mr. **Synar**. Mr. Chairman, we at this time offer Exhibits 197 and 215 into evidence.

The **Chairman**. Is there objection to those exhibits?

Mr. **Synar**. The book.

Mr. **Anderson**. The entire book?

Mr. **Synar**. Yes.

Mr. **Anderson**. No objection.

The **Chairman**. They will be admitted.

[The documents referred to were marked House Exhibit Nos. 197 and 215 and were received in evidence.]

Mr. **Synar**. That concludes my direct, Mr. Chairman.

The **Chairman**. Is there cross-examination of this witness?

Mr. **Anderson**. Yes, Mr. Chairman.

May I retrieve this exhibit?

The **Chairman**. Certainly.

CROSS-EXAMINATION

Mr. **Anderson**. Ms. Rogers, I have retrieved what is marked House Exhibit—do you see a number on there?

Ms. **Rogers**. Not House exhibit, grand jury exhibit.

Mr. **Anderson**. On the cover.

Ms. **Rogers**. I am sorry. Yes. 214.

Mr. **Anderson**. On the cover of House Exhibit 214, what is the other label? grand jury?

Ms. **Rogers**. Grand Jury Exhibit 10C.

Mr. **Anderson**. 10C. Now, is that message book one of a series that were obtained from Mr. Borders' office through you back in 1981?

Ms. **Rogers**. Yes.

Mr. **Anderson**. And do you recall the evening and afternoon of October 9, 1981?

Ms. **Rogers**. Not specifically.

Mr. **Anderson**. Do you recall that there was an evening when a group of FBI agents came into the office?

Ms. **Rogers**. Oh, yes. The day that the agents came to the office, OK. Yes.

Mr. **Anderson**. And do you recall whether they had with them a subpoena *duces tecum* from a grand jury?

Ms. **Rogers**. Yes.

Mr. **Anderson**. And did that subpoena among other things call for those books?

Ms. **Rogers**. Yes.

Mr. **Anderson**. What did you do when they arrived?

Ms. **Rogers**. When the FBI agents arrived?

Mr. **Anderson**. Yes, with that subpoena.

Ms. **Rogers**. They identified themselves and they told me, I think it was Agent Murphy who handed me the subpoena, and one of them attempted to go up the steps, and I told them no, they couldn't. They had to stay there. I made a phone call.

Mr. **Anderson**. What was the response when you told them they had to stay there?

Ms. **Rogers**. They did. You know, he sort of backed away. He started up the steps and I said, "No. Wait. Wait here." It was the reception area that they—I let them into the office and they were in the reception area. And after they had identified themselves and they said Mr. Borders was in a lot of trouble, then they asked certain questions and they also served—it was all going on at the same time. They were serving—Agent Murphy was serving the subpoena and saying several things in terms of Mr. Borders being in trouble and did I know Alcee Hastings, did I know—I think he brought up Dredge. He was just throwing out questions to see what my answers would be.

And I asked them to wait there. I made a phone call because there was no one in the office but myself and I wanted guidance.

Mr. **Anderson**. Who did you call? Who did you call for guidance?

Ms. **Rogers**. I called H. Carl Moultrie, who was one of my former employers.

Mr. **Anderson**. And what did Mr. Moultrie tell you to do?

Ms. **Rogers**. He told me I could accept the subpoena but that I did not have to answer. And it did not—I read it and I did not have to comply with it right at that moment. There was a date that we had to turn in the items that were asked for.

Mr. **Anderson**. And then what did you do?

Ms. **Rogers**. Then they left. I asked them, you know, and they left after I had—I told them they had served the subpoena and then I asked them to leave.

Mr. **Anderson**. OK. They left without the records on that day; is that correct?

Ms. **Rogers**. Oh, no, they didn't get the records that day.

Mr. **Anderson**. Now, Ms. Rogers, I want to show you a series of what I think are photocopies of those books and just have you identify them.

Mr. Chairman, to avoid authenticity problems during the respondent's case, I am simply briefly going to ask the witness to authenticate what I believe to be copies of all the books that were taken on that occasion. I am not moving them in at this time.

Ms. Rogers, I would ask you to examine each of those books, and if you would as you examine it read in the Respondent's Exhibit No., any other exhibit numbers that are marked, the dates on the cover, and tell the committee, if you would, whether that is a copy of a message book that was maintained in the same way you told Representative Synar that the book you talked to in some details maintained.

Ms. **Rogers**. OK. The first one is Respondent's Exhibit No. 25, dated from February 17, to May 16, 1981. And what else did you need to know?

Mr. **Anderson**. Is that a copy of a phone message pad maintained in the ordinary course of the law offices of Borders, Cobb and Williams?

Ms. **Rogers**. Yes.

Mr. **Anderson**. Could you just go on to the next one now?

Ms. **Rogers**. This is Respondent's Exhibit No. 26 that dates from February 19 to March 5, 1981.

The **Chairman**. Counsel, let me just ask counsel for the House is there an objection to stipulating that these are authentic copies of what they purport to be.

Mr. **Synar**. Mr. Chairman, it is going to be difficult until we get through all of them. Obviously, these are xerox copies of them. But, if that will assist Mr. Anderson at this time, with that caveat——

Mr. **Anderson**. I will represent they are xerox copies of documents I got from the House. I would be more than happy to work with the originals.

The **Chairman**. Do I understand, then, the House will stipulate that these are authentic copies of what they purport to be?

Mr. **Synar**. Yes, sir.

The **Chairman**. That may allow you to shortcut your testimony.

Mr. **Anderson**. Ms. Rogers, how long had you been—when did you start working in the law offices?

Ms. **Rogers**. January of 1980.

Mr. **Anderson**. And did you, in fact, know Judge Alcee Hastings?

Ms. **Rogers**. I met him during the scope of my employment, at that time.

Mr. Anderson. And had he called on the telephone from time to time?

Ms. Rogers. Yes.

Mr. Anderson. And who were the—besides Mr. Borders, who were the other lawyers in that office?

Ms. Rogers. James Cobb and Dudley Williams, Robert Bell, and I believe maybe Pierson Lidell. I am not sure if he was there at that time. And there was also one other gentleman whose name I can't remember. He was just there a short while.

Mr. Anderson. Can you tell the committee a little bit about what you observed about the way that Bill Borders—how he practiced law and how he worked in the office?

Ms. Rogers. Bill's practice was predominantly criminal. He had very few, if any, files. Mostly everything he did was by memory. His contact chiefly with his clients was through the phone. He kept a constant call into the office if he was in court or if he was out, checking in for messages, and he would normally call in for messages and return the call to his clients out, a lot of times from pay phones.

Mr. Anderson. Well, now I think you indicated that you were a legal secretary at the office.

Ms. Rogers. Right.

Mr. Anderson. Did you type court papers and things like that for people?

Ms. Rogers. Yes. But Bill—I can't remember. Maybe once in the time that I worked there I might have typed a divorce decree for him, and that was—he was only doing that type of case because it was a friend who was getting divorced and it was a favor-type situation to represent him. But he had to get help from one of the other attorneys because it wasn't his field.

Mr. Anderson. Well, the other attorneys, Mr. Cobb, did he have many files?

Ms. Rogers. Yes.

Mr. Anderson. Did you do a good bit of typing for him?

Ms. Rogers. Yes.

Mr. Anderson. What kind of practice did he engage in?

Ms. Rogers. All the other attorneys had general practices. Mr. Cobb had a lot of civil litigation, and the same with Attorney Williams, except Attorney Williams has a lot of real estate cases.

Mr. Anderson. And did Mr. Williams have a large number of files?

Ms. Rogers. Yes.

Mr. Anderson. And you did a fair amount of typing for them?

Ms. Rogers. The bulk of the typing and the file keeping and so forth was for Attorney Cobb and Attorney Williams.

Mr. Anderson. But I take it they also transacted business by telephone?

Ms. Rogers. Yes, to a certain extent.

Mr. Anderson. New, am I correct? Do I understand the ordinary practice of your office is that, if someone called the office and the person they were calling for was there, you would simply put the call through, wouldn't you?

Ms. Rogers. That is correct.

Mr. **Anderson**. There wouldn't be a message in the message book if the people spoke?

Ms. **Rogers**. No.

Mr. **Anderson**. So the only—all of those messages in that book are illustrations of times when there was not a communication by telephone; is that correct?

Ms. **Rogers**. That is correct.

Mr. **Anderson**. And then Mr. Borders might call in from time to time to get his messages and you would just read those, his messages off?

Ms. **Rogers**. That is right.

Mr. **Anderson**. Do you ever recall Judge Hastings calling Jimmy Cobb?

Ms. **Rogers**. Yes.

Mr. **Anderson**. Do you know what positions other than a lawyer in the office Mr. Cobb has held?

Ms. **Rogers**. Well, he is a retired professor now from Howard University Law School, and he has also been past president, as Dudley Williams was a past president, of the National Bar Association. Mr. Cobb is very active in the National Bar, and I think he is on the board—he is one of the Board of Governors. He is a trustee on the Board of Governors of the National Bar.

Mr. **Anderson**. And in 1981, had Mr. Cobb served as president of the National Bar Association?

Ms. **Rogers**. Prior to that time, yes.

Mr. **Anderson**. Prior to that time. And he was active in the affairs of the National Bar Association at that time?

Ms. **Rogers**. Yes.

Mr. **Anderson**. And that was in addition to this practice, if I understand; am I correct about that?

Ms. **Rogers**. That is correct.

Mr. **Anderson**. Was he teaching at that time?

Ms. **Rogers**. Yes.

Mr. **Anderson**. And Mr. Williams, was he active in the affairs of the National Bar Association?

Ms. **Rogers**. He was, but he was more active also in the Washington Bar, which was a local bar. But he did participate in National Bar activities also.

Mr. **Anderson**. And apart from transacting most of his business over the telephone, were there any other eccentricities or things about Bill Borders that you noticed, comparing him with Mr. Cobb and Mr. Williams or other lawyers that you had known, struck you as eccentric?

Ms. **Rogers**. With the exception of the fact that he very seldom wrote anything down, no. Their practices were just completely different. The other two gentlemen—I believe in all the time that I have worked for both of them now, Mr. Williams and Mr. Cobb, for almost 12 years, and they constantly keep records; they constantly keep files. That is something Mr. Borders never did. Once in a blue moon, he might write a name and telephone number down, and that was the extent of it, if that.

Mr. **Anderson**. Now, you indicated Mr. Borders rarely told you to keep things secret. Can you ever recall him telling you that you should advertise what he was up to?

Ms. Rogers. Well, first of all, I was not privy to that. His clientele was predominantly criminal, and that is the type of clientele that secrecy and attorney-client privilege is very important in. And he would not discuss cases per se about his clients with me, as opposed to the other attorneys where I worked directly on the cases.

Mr. Anderson. Well, Mr. Borders, I take it, during the year 1980–1981, was president of the National Bar Association; is that correct?

Ms. Rogers. I cannot say that for sure. I know that it was close to that time that he was president.

Mr. Anderson. Well, whenever it was, were you the principal secretary-receptionist in the office?

Ms. Rogers. Yes.

Mr. Anderson. And did Mr. Borders discuss with you his comings and goings and what he was doing in his capacity as president of the National Bar Association?

Ms. Rogers. Sometimes he did. Sometimes he coordinated it with the secretary of the National Bar.

Mr. Anderson. And Mr. Borders was also active in Democratic politics, was he not?

Ms. Rogers. Yes, at one time he was.

Mr. Anderson. And did he discuss those affairs with you?

Ms. Rogers. No.

Mr. Anderson. And even if he had received a call, apart from Judge Hastings, another judge or a political figure, were those the kinds of messages you would give him over the pay phone when he called in?

Ms. Rogers. Whenever he called in. I am not saying that he called always from a pay phone. He could have been calling from a regular phone, but a lot of times he did use pay phones. I would give him whatever messages had come into the office for him, regardless of who they were from.

Mr. Anderson. Now, Ms. Rogers, I think you are one of the few people who I acknowledge got involved in this earlier than I did, but let me just review with you how many times you have gone places.

Am I correct that you were called to testify before a grand jury some time after Mr. Borders' arrest?

Ms. Rogers. That is right.

Mr. Anderson. And were you called to Atlanta to testify at Mr. Borders' trial?

Ms. Rogers. That is right.

Mr. Anderson. And were you called to Miami to testify at Judge Hastings' trial?

Ms. Rogers. Yes.

Mr. Anderson. And were you subsequently called to Atlanta to testify before a group of judges?

Ms. Rogers. Yes.

Mr. Anderson. Now, the grand jury proceeding, was that open to the public?

Ms. Rogers. No.

Mr. Anderson. Was the trial in the *United States* v. *Borders*, was his trial open to the public, as you recall?

Ms. Rogers. I believe so.

Mr. **Anderson**. And Judge Hastings' trial, was that open to the public?

Ms. **Rogers**. Yes.

Mr. **Anderson**. When you were called to testify before the committee of judges, was that open to the public?

Ms. **Rogers**. No.

Mr. **Anderson**. And did they give you any instruction about what you should do about the matters you had testified to?

Ms. **Rogers**. I do not remember everything that they said, but they made it clear that it was a secret type hearing and that everything that transpired there was to be kept confidential.

Mr. **Anderson**. And over the course of time, did counsel for the House of Representatives take your deposition?

Ms. **Rogers**. Yes.

Mr. **Anderson**. How many times was that?

Ms. **Rogers**. Once.

Mr. **Anderson**. Was I or any representative of Judge Hastings present?

Ms. **Rogers**. No—well, I do not think so. No. I do not remember you being there. No. I am sorry. You were not there. You were not there. Sorry.

Mr. **Anderson**. May I have a moment, Mr. Chairman?

The **Chairman**. Certainly.

Mr. **Anderson**. I hope this is the last time you have to testify.

Ms. **Rogers**. I hope so, too.

Mr. **Anderson**. Mr. Chairman, could I simply go over to the desk and read which of respondent's exhibits have been authenticated by stipulations?

The **Chairman**. You may.

[Pause.]

Mr. **Anderson**. They are numbered Respondent's Exhibits 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35. I will deliver them to the managers with time to compare them against the originals so we both know we are playing with the same deck. I do not intend to put the entire set in the record.

Mr. **Synar**. Mr. Chairman, we will assist Mr. Anderson. We will provide the originals for those to be of help.

Mr. **Anderson**. Could I ask one more question?

The **Chairman**. You may.

Mr. **Anderson**. I think you indicated that you did know that Judge Hastings knew Jimmy Cobb; is that correct?

Ms. **Rogers**. Yes.

Mr. **Anderson**. And did he call him from time to time?

Ms. **Rogers**. Yes.

Mr. **Anderson**. Do you know whether he knew Dudley Williams?

Ms. **Rogers**. Yes.

Mr. **Anderson**. Did he call him from time to time?

Ms. **Rogers**. Yes.

Mr. **Anderson**. Thank you, Ms. Rogers.

The **Chairman**. Is there redirect examination of this witness?

REDIRECT EXAMINATION

Mr. **Synar**. Yes, Mr. Chairman.

Ms. Rogers, did you speak to Mr. Shorter on October 9th when the agents were in the office?

Ms. **Rogers**. I do not believe when the agents were in the office. Not at the same time. I recall Mr. Shorter calling to see if Dudley or Jimmy was there, and I believe to say that Bill had been arrested and to come over to his office. I just do not remember exactly.

Mr. **Synar**. Mr. Murphy, the agent who was there, did not talk to Mr. Shorter, did he?

Ms. **Rogers**. I will not say that he did not. I just do not remember that. I remember more specifically the call I made to Judge Moultrie for guidance, and I know that I talked with Mr. Shorter. I went to his office. But I do not remember if Mr. Murphy talked with him or not, at that time. I know that he made arrangements—Mr. Shorter made arrangements for the things, the books and the calendars and so forth, with the Government to see that those things that we had gathered up got to them. So at some point in time, I am sure he did speak with him.

Mr. **Synar**. Thank you, Ms. Rogers.

The **Chairman**. Any recross-examination?

RECROSS EXAMINATION

Mr. **Anderson**. Ms. Rogers, just so I am clear, the only call you do remember making while Agent Murphy was in the office to then attorney, now Judge Moultrie?

Ms. **Rogers**. Well, he is deceased, but yes. He was not an attorney at that time. He was a judge at that time. But I trusted him with my life. So, therefore, I made the call to the person that I knew I could find and who would tell me just pointblank very simply what to do.

Mr. **Anderson**. And he did?

Ms. **Rogers**. Yes.

Mr. **Anderson**. And you did?

Ms. **Rogers**. Yes.

Mr. **Anderson**. And that is the only call you remember making while Agent Murphy was in the office; is that correct?

Ms. **Rogers**. I believe Mr. Shorter called, but I do not recall calling Mr. Shorter because I would not have known at that time to call Mr. Shorter.

Mr. **Anderson**. And do you recall, if Mr. Shorter called, do you recall whether Agent Murphy was still there?

Ms. **Rogers**. I am just not sure on that, Mr. Anderson.

Mr. **Anderson**. Eight years is a long time. Thank you, Ms. Rogers.

Ms. **Rogers**. Yes.

The **Chairman**. I have no questions of this witness. Are there questions? Senator Specter. Senator Rudman.

EXAMINATION BY THE COMMITTEE

Senator **Rudman**. Just one. How long did you work for Mr. Borders?

Ms. **Rogers**. Up until the time that—from January 1980 until the time that he was arrested. He was a member of the firm. And I did not work for him individually. It was he was a member of a firm. I worked for the entire firm.

Senator **Rudman**. Would it be fair to say that you took almost all of the phone messages that would be directed to him?

Ms. **Rogers**. I did not take every message. I would say it would be fair to say that I took 90 percent of the messages. There were phone books throughout the office. There was a four-story office, and sometimes the attorneys took messages. Sometimes we had part-time help. But I was the only full-time regular employee. So I would say about 90 percent of the messages.

Senator **Rudman**. Do you recall the name of an attorney in Washington, an unusual first name, Charlester, C-h-a-r-l-e-s-t-e-r, Charlester Williams?

Ms. **Rogers**. No, I do not.

Senator **Rudman**. Thank you.

The **Chairman**. Are there other questions by members of the committee? Senator Pryor.

Senator **Pryor**. Yes. Thank you.

You testified that Mr. Borders had a practice of being out in court and wherever, and that he would use a lot of pay phones and long-distance calls if he were out of the Washington area and used the pay phone——

Ms. **Rogers**. I did not testify to that, excuse me.

Senator **Pryor**. Oh, I am sorry.

Ms. **Rogers**. I did not say that. I said that he used pay phones quite often, but that I did not know if he was always using a pay phone or from whatever phone he was using. And I do not think we discussed long-distance.

Senator **Pryor**. All right. If he called in long-distance, would he often call collect? Or how did he make his phone charges? How did he do this, do you recall?

Ms. **Rogers**. I believe he would call collect.

Senator **Pryor**. If he were outside the——

Ms. **Rogers**. If it were long-distance.

Senator **Pryor**. All right. Thank you. That is all I have.

The **Chairman**. Any other questions by committee members?

[No response.]

The **Chairman**. Any reason this witness cannot be excused?

[No response.]

The **Chairman**. If not, we appreciate your testimony very much, Ms. Rogers, and you are excused.

[Witness excused.]

The **Chairman**. Will the House call its next witness, please?

Mr. **Bryant**. Mr. Chairman, House Exhibit 143 was identified but not introduced. It is the HOBIS voucher for October 10, 1981, at 1:56 a.m. for Room 11229. Inasmuch as we did not ask that it be introduced, we would now ask that it be admitted into evidence.

The **Chairman**. Is there objection to that exhibit being introduced or admitted?

Mr. **Anderson**. No objection.

The **Chairman**. It will be admitted.

[The document referred to was marked House Exhibit No. 143 and was received in evidence.]

Mr. Bryant. At this time, the House would offer the prior testimony of Madeline Petty.

The Chairman. Is there objection to that prior testimony? The House proposes that that testimony be included in the record at this point. Is that what I understand?

Mr. Bryant. It will be offered by Mr. Fish.

The Chairman. Is he planning to read the testimony? Is that your expectation?

Mr. Bryant. He will offer a brief summary of her testimony, of her prior testimony.

SUMMARY OF THE PRIOR TESTIMONY OF MADELINE PETTY

Mr. Fish. Mr. Chairman, at this time, I would like to read to the committee a brief summary of the prior testimony of Ms. Madeline Petty which has been received into evidence pursuant to the eighth order of the committee.

Ms. Petty was a social acquaintance of William Borders who accompanied Mr. Borders to the Sugar Ray Leonard-Tommy Hearns fight in Las Vegas, Nevada, on September 16, 1981. The plans were made to attend this fight "somewhere between the middle to the end of August," and Ms. Petty made the plane reservations around the 1st of September. The two of them left for the fight on September 15 and returned to Washington on September 18. While in Las Vegas, Mr. Borders saw a lot of people that he appeared to know, some of whom were lawyers. Ms. Petty was aware of no attempts on the part of Mr. Borders to disguise his presence in Las Vegas or his plans to go to Las Vegas.

Mr. Anderson. Might I present a summary of what I might have elicited on cross-examination? It will be as brief as Representative Fish.

The Chairman. You can represent what—are you going to represent a summary of the cross-examination at the prior hearing?

Mr. Anderson. I am only going to summarize some additional facts which appear in the testimony to set it in the context, just as Representative Fish has set her testimony.

The Chairman. But you are representing that you are going to summarize facts from this prior testimony?

Mr. Anderson. Yes, from the prior testimony. There is nothing new here.

Mr. Bryant. Well, Mr. Chairman, just a moment. I heard the counsel say something quite different than what I think the Chair asked. We will object to the offering of anything that was not elicited in cross-examination during the prior testimony. That is the rule of the committee, and that is what the original agreement was.

The Chairman. Well, my understanding is that counsel now wishes to represent to the committee some items that were elicited in the prior testimony that he does not believe were contained in the summary that was just read, and he will be permitted to do that.

Mr. Anderson. Thank you, Mr. Chairman.

My point is very simple. Ms. Petty testified at the trial. I have no problem with what Representative Fish has said. She also testified

that she could not recall having met Judge Hastings before and could not recall having had or received any telephone calls from him and did not recognize his voice. And that was as of the 1983 trial.

That is the end of my summary.

call Madeline Petty.

Thereupon--

MADELINE CAROLE PETTY

was called as a witness by the Government and, having been first duly sworn, was examined and testified as follows:

THE COURT: Would you please be seated and state your name and address and spell your last name?

THE WITNESS: My name is Madeline Carole Petty. I live at 5120 3rd Street, Northwest, Washingto D.C.

The spelling of my last name is P-e-t-t-y

DIRECT EXAMINATION

BY MR. RICHTER:

Q Now, Ms. Petty, what is your occupation?

A I am a public administrator.

Q And where are you presently employed?

A D.C. Government.

Q Do you know a man named William Borders?

A Yes.

Q Approximately how long have you known William Borders?

A Approximately three years.

Q Would you characterize your relationship with Mr. Borders as being a business relationship or a social relationship?

A Social relationship.

Q Now, did there come a time in 1981 when you and Mr. Borders made plans to attend a fight together?

A Yes.

Q And which fight was it that you were going to attend?

A The Sugar Ray Leonard-Tommie Hearns fight.

Q Where was that fight being held?

A Las Vegas, Nevada.

Q And do you know what the date of the fight was?

A September 16, 1981.

Q When did you first make plans to attend that fight?

A Somewhere between the middle to the end of August.

Q Do you remember when--did you make plane reservations to go to Las Vegas?

A I believe I did.

Q Do you remember when you made the plane reservations?

A Somewhere around the 1st of September.

Q When did you depart for Las Vegas with Mr. Borders?

A September 15th, the day before the fight.

Q Now, prior to leaving for Las Vegas, did Mr. Borders ever tell you not to tell anybody he was going to the fight in Las Vegas on the 16th?

A No.

Q Now, did you in fact attend the fight in Las Vegas?

A Yes.

Q And where was it held?

A Ceasar's Palace.

Q And who won the fight?

A Sugar Ray Leonard in the fourteenth round. [Laughter]

Q Now, were there lots of people in Las Vegas then for the fight?

A Thousands.

Q And while in Las Vegas, for how many days were you in Las Vegas?

A From Tuesday to Friday.

Q - While in Las Vegas, did you ever see

Mr. Borders greeting people that he appeared to know?

A Yes.

Q Would you say a few or a lot?

A I would say a lot.

Q And were there other lawyers from the National Bar Association?

A There were other lawyers there.

BY MR. RICHTER:

Q Now, when did you return from Las Vegas?

A That Friday, which I guess would be September 18th.

Q And what time of day did you arrive back in Washington?

A I believe it was 8:00 or 9:00 o'clock at night. It was in the evening, late, dark.

Q Excuse me. Did you fly back with Mr. Borders?

A Yes.

Q When was the last time you saw Mr. Borders that Friday night?

A When I left National Airport.

Q And he remained at the airport?

A That is correct.

Q Did you know where he was going then?

A No, I did not.

Q Ms. Petty, are you aware of any efforts whatsoever on the part of Mr. Borders to disguise his presence in Las Vegas or his plans to go to Las Vegas?

A No.

MR. RICHTER: No further questions.

THE COURT: Cross examination?

JUDGE HASTINGS: If the Court please.

CROSS EXAMINATION

BY JUDGE HASTINGS:

Q Ms. Petty, my name is Alcee Hastings and until today, have you met me, ma'am?

A Never.

Q All right. And you did not tell me, did you, that you and Bill were going to Las Vegas, did you?

A I have never spoken to you, Mr. Hastings.

Q That's my point. I am just asking you that particular question.

Have there been other times that you have gone either to a fight or elsewhere with Mr. Borders?

A I attended Super Bowl 15.

Q Super Bowl 15 in New Orleans?

A With Mr. Borders.

Q And you all went from Washington to New Orleans?

A That is correct.

Q And on your way back, isn't it true that you stopped in Tampa on your way back to Washington

A The flight connected through Tampa.

Q All right. And when you were in Tampa, did you meet a gentleman that was a friend of Mr. Borders?

A Yes.

Q Is his name Del Stewart?

A Frankly, I don't remember his name.

Q Did you converse together and have drinks or whatever?

A We had lunch or something.

Q Ms. Petty, did you think it was unusual at all when you got back from Las Vegas that Mr. Borders didn't tell you why he was going to remain at National Airport and go elsewhere?

A I didn't know what Mr. Borders' plans were.

Q I understand. My question to you was did you think that unusual.

A No, I did not.

Q And is that--

A We had arrived separately at the airport.

Q I see. But is it unusual, based on your relationship with Mr. Borders, if you know, for him to change his plans unexpectedly?

A I am not sure I understand the question.

Petty - cross

BY JUDGE HASTINGS:

Q Does he change his plans from time to time, unexpectedly?

A I am not sure I have that kind of experience with him to answer that question.

Q I see. So you just don't know?

A No, I don't know.

Q Has he picked you up from the airport before?

Let me flip it. Have you picked him up?

A I don't think I've ever picked him up from the airport.

Q Maybe you don't know him as well as some of us are led to believe that you do? Is that right?

A That may be true.

JUDGE HASTINGS: Thank you.

THE COURT: Redirect?

MR. RICHTER: Nothing, your Honor.

THE COURT: Thank you, Ms. Petty. You may step down and I assume you may be finally excused?

MR. WEINGARTEN: Yes, your Honor.

THE COURT: And you may leave, at this time.

MADELINE CAROL PETTY,

CALLED AS A WITNESS, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. DOAR:

Q. MS. PETTY, WHERE DO YOU LIVE?

A. I LIVE AT 5120 THIRD STREET, NORTHWEST, WASHINGTON, D. C.

Q. AND WERE YOU SUBPOENAED TO COME HERE TODAY?

A. YES, I WAS.

Q. AND WHAT IS YOUR OCCUPATION?

A. I AM THE DIRECTOR OF THE D.C. DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT, WASHINGTON, D. C.

Q. HOW LONG HAVE YOU HELD THAT POSITION?

A. I WAS APPOINTED TO THAT POSITION NOVEMBER 1984.

Q. PRIOR TO THAT TIME, COULD YOU TELL THE COMMITTEE WHAT YOUR JOB WAS?

A. YES. FROM MARCH OF 1982 UNTIL I WAS APPOINTED DIRECTOR, I WAS DEPUTY DIRECTOR FOR THE AGENCY.

FROM FEBRUARY OF 1980 UNTIL MARCH OF '82, I WAS THE ADMINISTRATOR FOR THE OFFICE OF ADMINISTRATION AND MANAGEMENT AT THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT.

Q. NOW, DURING THE YEAR 1981, DID YOU KNOW A PERSON BY THE NAME OF WILLIAM BORDERS?

A. YES.

Q. HOW LONG HAD YOU KNOWN HIM AT THAT TIME?

A. I THINK I MET MR. BORDERS MAYBE THE SPRING OF THAT YEAR.

JUDGE TJOFLAT: OF WHICH YEAR WAS THAT?

THE WITNESS: '81.

BY MR. DOAR:

Q. AND WAS THIS A SOCIAL OR BUSINESS ACQUAINTANCE?

A. SOCIAL.

Q. AND IN THE YEAR 1981, DID YOU KNOW A PERSON BY THE NAME OF JUDGE ALCEE L. HASTINGS FROM MIAMI?

A. NO.

Q. HAD YOU NEVER MET HIM?

A. I HAD NEVER MET HIM THEN.

I HAD THE OCCASION TO SEE MR. HASTINGS WHEN I WAS CALLED FOR THE TRIAL, BUT I DID NOT KNOW HIM.

Q. OTHER THAN THAT, YOU HAD NEVER MET HIM OR SEEN HIM. IS THAT CORRECT?

A. THAT'S CORRECT.

JUDGE TJOFLAT: AT WHOSE TRIAL?

THE WITNESS: MR. HASTINGS.

BY MR. DOAR:

Q. NOW, DO YOU KNOW A PERSON BY THE NAME OF HEMPHILL PRIDE?

A. NO, I DON'T.

Q. WHEN YOU WERE INTERVIEWED BY THE F.B.I. BACK SEVERAL

YEARS AGO -- DO YOU REMEMBER THAT, BEING INTERVIEWED?

A. YES.

Q. YOU INDICATED THEN THAT YOU FIRST MET MR. BORDERS IN MAY OF 1979. COULD YOU HAVE BEEN MISTAKEN WHEN YOU SAID MAY, SPRING OF '81, OR --

A. IT'S POSSIBLE THAT I MET HIM AS EARLY AS 1979.

Q. NOW, DID YOU IN THE FALL OF 1981, SPECIFICALLY SEPTEMBER, TRAVEL WITH MR. BORDERS TO LAS VEGAS, NEVADA?

A. YES, I DID.

Q. AND HOW DID YOU HAPPEN TO BE TRAVELING TO LAS VEGAS WITH MR. BORDERS?

A. THERE WAS A CHAMPIONSHIP FIGHT THAT WAS GOING TO BE IN LAS VEGAS.

Q. DO YOU REMEMBER WHO THE FIGHT WAS BETWEEN?

A. SUGAR RAY LEONARD AND TOMMY HEARNS.

Q. CAN YOU TELL ME WHETHER OR NOT MR. BORDERS HAD INVITED YOU TO GO TO THE FIGHT?

A. I'M NOT SURE WHO MENTIONED IT FIRST, BUT THE TRIP WAS TO BE LIKE A BIRTHDAY PRESENT FOR ME.

Q. AND DO YOU HAVE AN INTEREST IN BOXING?

A. OH, YES.

Q. AND MR. BORDERS KNEW THAT?

A. OH, YES.

Q. AND WHEN WAS YOUR BIRTHDAY?

A. IN AUGUST, AUGUST 17TH.

JUDGE JOHNSON: I CAN'T HEAR HER, MR. DOAR.

BY MR. DOAR:

Q. COULD YOU SPEAK UP AS LOUD AS YOU CAN, PLEASE?

A. YES, I WILL.

Q. LET ME GO BACK.

YOU SAY YOU HAD DISCUSSED THE FIGHT WITH MR. BORDERS PRIOR TO THE TIME YOU WENT ON THE TRIP.

A. YES.

Q. AND COULD YOU TELL US WHAT DISCUSSION TOOK PLACE AND WHEN?

A. I GUESS IT WAS ABOUT THE TIME OF MY BIRTHDAY.

AM I TALKING LOUDER NOW?

MR. DOAR: CAN YOU HEAR HER NOW, JUDGE JOHNSON?

JUDGE JOHNSON: I HEARD THAT LAST STATEMENT.

MR. DOAR: THAT'S FINE THEN, AND IF YOU WOULD KEEP YOUR VOICE AT THAT PITCH, WE WOULD APPRECIATE IT.

BY MR. DOAR:

Q. YOU SAID, "I GUESS IT WAS ABOUT THE TIME OF MY BIRTHDAY." IS THAT CORRECT?

A. YES. THAT WE TALKED ABOUT THE POSSIBILITY OF GOING OUT TO THAT FIGHT.

Q. AND YOUR BIRTHDAY WAS AUGUST --

A. SEVENTEENTH.

Q. AUGUST 17TH.

WAS ANYTHING SAID ABOUT YOU GOING AT THAT TIME?

A. WELL, WE HAD AGREED THAT IF OUR WORK SCHEDULES PERMITTED WE WOULD TRY TO MAKE THE TRIP.

Q. AND WAS THIS ANY KIND OF A PRESENT FOR YOU FOR YOUR BIRTHDAY?

A. IT WAS TO HAVE BEEN A BIRTHDAY PRESENT.

Q. I SEE.

AND DO YOU KNOW WHO PLANNED THE TRAVEL ARRANGEMENTS FOR THE TRIP?

A. SIR, I REALLY CAN'T REMEMBER. I DON'T KNOW IF IT WAS MR. BORDERS OR ME.

Q. UH-HUH.

A. I PROBABLY MADE THE RESERVATIONS.

Q. AND WERE THE RESERVATIONS MADE SOME TIME IN ADVANCE?

A. PROBABLY A COUPLE OF WEEKS BEFORE THE TRIP.

Q. SO IN OTHER WORDS, THIS WASN'T A LAST SPUR OF THE MINUTE TRIP ON YOUR PART WITH MR. BORDERS. YOU HAD BEEN PLANNING IT FOR ALMOST A MONTH AT THE TIME YOU MADE THE TRIP?

A. THAT'S CORRECT, WITH THE UNDERSTANDING THAT IF OUR WORK PREVENTED IT WE COULD NOT GO. I MEAN, THAT WAS AS MUCH TRUE FOR ME AS FOR HIM.

Q. BUT YOU HAD GONE AHEAD AND MADE THE RESERVATIONS AND GOT YOUR TICKETS?

A. YES. WE HAD GONE ON AND MADE THE RESERVATIONS.

Q. DID YOU PICK UP THE TICKETS OR DO YOU REMEMBER?

A. I DON'T REMEMBER.

Q. DID ANYTHING COME UP DURING THAT MONTH THAT SUGGESTED THAT THERE WOULD BE A COMPLICATION OR DIFFICULTY IN CARRYING OUT THE TRIP?

A. NOT THAT I CAN RECALL.

Q. AND CAN YOU TELL US WHETHER OR NOT YOU WERE IN TOUCH WITH MR. BORDERS DURING THAT MONTH, SEEING HIM ON OCCASION?

A. I'M SURE I SAW HIM ON OCCASION AND SPOKE WITH HIM.

Q. COULD YOU TELL US IF YOU CAN RECALL HOW FREQUENTLY?

A. OH, I DON'T KNOW.

Q. AND THEN WHAT DO YOU REMEMBER ABOUT THE TRIP? HOW DID YOU TRAVEL? BY AIR?

A. YES. WE FLEW OUT OF NATIONAL AIRPORT.

Q. AND DO YOU REMEMBER THE DATE THAT YOU LEFT?

A. IT WAS THE DAY BEFORE THE FIGHT, AND I BELIEVE IT MUST HAVE BEEN THE 15TH OF SEPTEMBER.

Q. AND WHAT AIRLINE DID YOU TRAVEL ON?

A. I BELIEVE IT WAS AMERICAN AIRLINES.

Q. AND DID YOU EXPERIENCE ANY DIFFICULTY IN GETTING OUT TO LAS VEGAS?

A. NO.

Q. DURING THE TIME THAT YOU WENT OUT TO LAS VEGAS, HAD YOU ALREADY MADE RESERVATIONS FOR YOUR RETURN TRIP?

A. YES.

Q. AND DO YOU REMEMBER WHAT DATE THE RETURN TRIP WAS TO BE ON?

A. I BELIEVE IT WAS ON FRIDAY, THAT FOLLOWING FRIDAY.

Q. AND IF THE FRIDAY WAS THE 18TH, IT WOULD BE FRIDAY THE 18TH?

A. YES.

Q. AND THAT WAS ALL PLANNED AND PREARRANGED BEFORE YOU LEFT ON THE TRIP. IS THAT CORRECT?

A. THAT'S CORRECT.

Q. AND WHEN YOU GOT TO LAS VEGAS, WHERE DID YOU STAY?

A. AT THE RIVIERA.

Q. AND DID YOU STAY THERE AT THE RIVIERA FOR SEVERAL DAYS?

A. FROM THE TIME WE ARRIVED UNTIL WE LEFT.

Q. AND DID YOU ATTEND THE FIGHT?

A. YES.

Q. AND THAT WAS ON THE 16TH?

A. THAT WAS -- I'M FAIRLY SURE IT WAS THE 16TH OF SEPTEMBER, 1981.

Q. AND THAT FIGHT WAS HELD IN LAS VEGAS?

A. IT WAS HELD IN LAS VEGAS.

Q. DO YOU REMEMBER WHILE YOU WERE IN LAS VEGAS WHETHER OR NOT MR. BORDERS SAID ANYTHING ABOUT WHAT HE WAS GOING TO DO WHEN HE GOT BACK TO WASHINGTON?

A. NO, I DON'T.

Q. WAS ANYTHING SAID ABOUT HIM HAVING TO GET BACK SO THAT HE COULD LEAVE ON ANOTHER TRIP?

A. WE DIDN'T HAVE THAT DISCUSSION, SIR.

Q. DO YOU HAVE ANY RECOLLECTION OF WHETHER MR. BORDERS RECEIVED ANY TELEPHONE CALLS FROM THE EAST DURING THAT PERIOD?

A. I DON'T REMEMBER ANY.

Q. NOW, DID YOU GET THE PLANE BACK FOR WHICH YOU HAD MADE RESERVATIONS?

A. YES.

Q. I'M SHOWING YOU WHAT HAS BEEN MARKED FOR IDENTIFICATION AS IC-57, 58 AND 59.

CAN YOU LOOK AT THOSE AIRLINE TICKETS AND TELL ME IF YOU RECOGNIZE THEM?

A. OH, I HAVE NO WAY OF KNOWING WHETHER I RECOGNIZE IT.

Q. IS THIS TICKET ISSUED IN THE NAME OF MR. WILLIAM BORDERS?

A. YES. WHAT I'M LOOKING AT IS ISSUED IN THE NAME OF WILLIAM BORDERS.

Q. AND DOES THIS TICKET REFLECT THAT IT WAS FOR TRAVEL FROM WASHINGTON TO CHICAGO TO LAS VEGAS?

A. YES. THAT'S WHAT IT SHOWS.

Q. AND THEN RETURN FROM LAS VEGAS TO ST. LOUIS AND THEN FROM ST. LOUIS TO WASHINGTON?

A. YES. THAT'S WHAT IT SHOWS.

Q. DO YOU REMEMBER HOW YOU TRAVELED? DID YOU TRAVEL FROM WASHINGTON TO CHICAGO TO LAS VEGAS?

A. YES.

Q. AND COMING BACK DID YOU COME BACK FROM LAS VEGAS TO ST. LOUIS TO WASHINGTON?

A. I'M FAIRLY SURE, YES.

Q. AND THESE TICKETS ARE DATED FOR THE DEPARTURE DATE OF SEPTEMBER 15TH, AND THEY SHOW A RETURN ON THE 18TH FROM LAS VEGAS.

WERE THOSE THE DAYS THAT YOU BELIEVE YOU TRAVELED TO LAS VEGAS WITH MR. BORDERS?

A. THEY ARE THE DAYS I BELIEVE WE TRAVELED.

Q. AND THE RESERVATION APPEARS TO HAVE BEEN MADE ON THE 1ST OF SEPTEMBER.

IS THAT ALL CONSISTENT WITH WHAT YOU RECOLLECT ABOUT THESE TRAVEL PLANS?

A. YES.

Q. AND THE TRAVEL THAT YOU ACTUALLY TOOK?

A. YES.

Q. NOW, DO YOU REMEMBER WHAT TIME YOU GOT BACK TO THE AIRPORT AT WASHINGTON?

A. SEEMS TO ME IT WAS LATE, MAYBE 8:00 OR 9:00 O'CLOCK IN THE EVENING. I KNOW IT WAS DARK.

Q. WAS ANYBODY AT THE AIRPORT WHEN YOU GOT THERE?

A. DUDLEY WILLIAMS WAS THERE.

Q. AND --

A. I DON'T KNOW IF HE WAS THERE WHEN WE GOT THERE, BUT HE

WAS THERE ONCE WE WERE IN THE AIRPORT TERMINAL.

Q. AND WHO IS DUDLEY WILLIAMS?

A. HE WAS A PARTNER OF MR. BORDERS.

Q. HAD YOU ASKED MR. WILLIAMS TO BE AT THE AIRPORT?

A. NO.

Q. HAD MR. BORDERS SAID TO YOU THAT HE WAS EXPECTING DUDLEY WILLIAMS?

A. NOT THAT I RECALL.

Q. WHAT HAPPENED AFTER YOU MET DUDLEY WILLIAMS IN THE AIRPORT OR AT THE AIRPORT?

A. I GOT MY BAGS. I RETRIEVED MY BAGS, AND MR. WILLIAMS TOOK ME TO MY CAR WHICH WAS PARKED ALL THE WAY IN THE BACK OF NATIONAL AIRPORT IN THE PARKING AREA, AND THEN I GOT MY CAR AND WENT HOME.

Q. AND WHAT HAPPENED TO MR. BORDERS, IF YOU KNOW?

A. I LEFT HIM AT THE AIRPORT.

Q. HE DIDN'T ACCOMPANY YOU AND DUDLEY WILLIAMS TO YOUR CAR?

A. NO, HE DID NOT.

Q. DID HE SAY WHAT HE WAS GOING TO DO?

A. NO.

Q. DID HE GIVE YOU ANY INDICATION THAT HE WAS GOING TO TRAVEL ANYWHERE ELSE?

A. NO, HE DID NOT.

Q. WHAT, IF ANYTHING, DID MR. WILLIAMS SAY ABOUT WHAT MR.

BORDERS WAS GOING TO DO?

A. HE DIDN'T SAY ANYTHING TO ME.

Q. I SEE.

SUBSEQUENT TO THAT TIME, HAVE YOU EVER DISCUSSED THAT TRIP WITH MR. BORDERS AGAIN?

A. THE TRIP TO LAS VEGAS?

Q. YES.

A. NO, OTHER THAN MAYBE WE MIGHT HAVE HAD SOME CONVERSATIONS ABOUT THE FIGHT, ITSELF.

Q. HAVE YOU EVER DISCUSSED THE TRIP WITH JUDGE HASTINGS?

A. NO.

Q. HAVE YOU EVER DISCUSSED IT WITH ANYONE WHO PURPORTED TO REPRESENT EITHER MR. BORDERS OR JUDGE HASTINGS?

A. NO.

Q. AFTER YOU WERE SUBPOENAED TO COME HERE TODAY, DID YOU DISCUSS YOUR PROSPECTIVE TESTIMONY WITH ANYBODY PRIOR TO COMING HERE TODAY?

A. I ONLY CALLED TOM DYSON WHO WENT WITH ME WHEN I HAD TO GO TO MIAMI BEFORE, A LAWYER, TO LET HIM KNOW I HAD BEEN SUBPOENAED AND TO GET HIS ADVICE AS TO WHAT I SHOULD DO.

Q. OTHER THAN THAT?

A. OTHER THAN THAT, WITH NO ONE.

I HAD TO NOTIFY MY BOSS THAT I HAD BEEN SUBPOENAED.

Q. NOW, DO YOU KNOW A PERSON BY THE NAME OF JOSEPH NESLINE?

A. NO, I DO NOT.

Q. DO YOU RECALL MEETING OR SEEING HIM WHEN YOU WERE IN LAS VEGAS?

A. NO, I DON'T.

Q. DO YOU HAVE ANY RECOLLECTION OF WHETHER MR. BORDERS MENTIONED THAT NAME WHEN HE WAS IN LAS VEGAS WITH YOU?

A. I HAVE NO RECOLLECTION OF THAT NAME.

MR. DOAR: I BELIEVE THAT'S ALL, YOUR HONOR.

JUDGE GODBOLD: ANY QUESTIONS BY ANY MEMBERS OF THE COMMITTEE?

ALL RIGHT. THANK YOU, MS. PETTY.

YOU MAY STEP DOWN.

THE WITNESS: THANK YOU.

JUDGE GODBOLD: ANY REASON WHY SHE CAN'T BE EXCUSED, MR. DOAR?

MR. DOAR: NO, YOUR HONOR.

JUDGE GODBOLD: ALL RIGHT. YOU ARE FREE TO GO HOME.

THE WITNESS: THANK YOU, VERY MUCH.

MR. WEBB: MICHAEL TAINES IS THE NEXT WITNESS.

THE CLERK: MICHAEL TAINES, COME INTO THE COURTROOM, PLEASE.

MR. DOAR: THIS WITNESS, YOUR HONOR, HAS REQUESTED THAT HE BE PERMITTED TO STAND BECAUSE OF A BACK PROBLEM.

JUDGE GODBOLD: YES, SIR.

THE WITNESS: DO YOU HAVE ANY OBJECTION IF I STAND?

372(C)(14). "ALL PAPERS, DOCUMENTS AND RECORDS OF PROCEEDINGS RELATED TO INVESTIGATIONS CONDUCTED UNDER THIS SUBSECTION," AND THIS IS SUCH AN INVESTIGATION, "SHALL BE CONFIDENTIAL AND SHALL NOT BE DISCLOSED BY ANY PERSON IN ANY PROCEEDING."

MR. DOAR.

- - -

MADELINE CAROL PETTY,

RECALLED AS A WITNESS, BEING FIRST DULY SWORN, TESTIFIED FURTHER AS FOLLOWS:

FURTHER DIRECT EXAMINATION

BY MR. DOAR:

Q. MRS. PETTY, WHEN YOU WERE HERE BEFORE YOU MAY REMEMBER THAT I ASKED YOU SOME QUESTIONS ABOUT YOUR TRIP TO LAS VEGAS WITH MR. BORDERS IN SEPTEMBER OF 1981 --

A. YES, SIR.

Q. -- TO SEE THAT FIGHT AND HOW YOU HAD ARRANGED FOR THAT, MR. BORDERS HAD ARRANGED FOR THAT AT THE TIME OF YOUR BIRTHDAY. I THINK SOMETIME IN AUGUST OF 1981.

A. THAT'S CORRECT.

Q. AND HOW YOU HAD PURCHASED TICKETS AROUND THE FIRST OF SEPTEMBER, 1981?

A. YES, SIR.

Q. NOW, I WANTED TO ASK YOU SOME QUESTIONS ABOUT THE SPRING OF 1981, APPROXIMATELY THREE OR FOUR OR FIVE MONTHS

PRIOR TO SEPTEMBER.

YOU KNEW MR. BORDERS AT THAT TIME AS WELL; IS THAT CORRECT?

A. IN THE SPRING OF 1981?

Q. YES.

A. YES, SIR.

Q. AND YOU HAD KNOWN HIM FOR HOW LONG AT THAT TIME?

A. I THINK I MET MR. BORDERS IN 1980.

Q. NOW, DID YOU KNOW A PERSON BY THE NAME OF NOEL SMITH?

A. I KNOW A NOEL SMITH.

Q. AND WHEN DID YOU MEET HER?

A. I MIGHT HAVE MET MS. SMITH AROUND '78 OR '79. IT WAS IN THE SEVENTIES, I BELIEVE.

Q. AND DID SHE KNOW MR. BORDERS?

A. I DON'T KNOW, SIR.

Q. YOU DON'T KNOW WHETHER SHE --

A. NO. I DIDN'T KNOW MS. SMITH AS RELATED TO MR. BORDERS.

Q. I SEE. SO THAT I ASSUME FROM YOUR ANSWER THAT THERE WERE NO OCCASIONS WHEN YOU AND MR. BORDERS AND NOEL SMITH WENT OUT ON SOCIAL ENGAGEMENTS TOGETHER?

A. NO, SIR.

Q. NOW, YOU TESTIFIED AT THE LAST TIME THAT THE FIRST TIME YOU MET JUDGE HASTINGS WAS AT HIS TRIAL?

A. THAT'S CORRECT.

Q. AND --

A. THE ONLY TIME.

Q. THE ONLY TIME?

A. (NODS HEAD AFFIRMATIVELY).

Q. WHAT WAS YOUR TELEPHONE NUMBER AGAIN AT THAT TIME?

A. IN WASHINGTON IT'S AREA CODE 202-829-3450.

Q. NOW, THE COMMITTEE HAS RECEIVED RECORDS, TELEPHONE RECORDS OF JUDGE HASTINGS, THAT INDICATE THAT ON THE NIGHT OF THE 5TH OF MAY, JUST SHORTLY AFTER MIDNIGHT, JUDGE HASTINGS PLACED A TELEPHONE CALL TO YOUR TELEPHONE --

JUDGE TJOFLAT: EXCUSE ME. IT WAS THE 6TH OF MAY AT 12:07.

BY MR. DOAR:

Q. THE NIGHT OF THE 5TH OF MAY JUST SHORTLY AFTER MIDNIGHT WHICH WOULD BE AT 12:07, IN 1981, JUDGE HASTINGS PLACED A TELEPHONE CALL FROM MADISON, NEW JERSEY TO YOUR TELEPHONE IN WASHINGTON AND CHARGED THE CALL TO HIS HOME TELEPHONE NUMBER IN MIAMI.

I HAVE SHOWN YOU THIS RECORD WHEN YOU WERE WAITING IN THE WITNESS ROOM, BUT I WANT TO SHOW IT TO YOU AGAIN SO THAT YOU CAN SEE WHAT I AM REFERRING TO.

MR. DOAR: I WOULD LIKE TO HAND TO THE COMMITTEE A PART OF EXHIBIT 67.-

BY MR. DOAR:

Q. DO YOU SEE RUNNING DOWN THE TELEPHONE BILL FROM

MADISON, A CALL TO WASHINGTON THERE?

A. YES, SIR.

Q. AND IT SAYS WASHINGTON, D. C., 202-829-3450, AND 12:07 IS THE TIME. IT'S A TWO MINUTE CALL.

A. I SEE THAT.

Q. OKAY. NOW, YOU CAN OBSERVE FROM THIS PHONE CALL THAT FIVE DAYS LATER ON --

JUDGE TJOFLAT: FROM THE RECORD.

BY MR. DOAR:

Q. FROM THE RECORD.

ON MAY 11TH THAT A CALL WAS MADE TO 202-829-3450 AT 6:28 IN THE MORNING FOR ONE MINUTE?

A. YES, I SEE THAT.

Q. AND JUST IMMEDIATELY BEFORE THAT CALL, THERE WAS A CALL TO 202-389-6321.

JUDGE TJOFLAT: THREE NINE EIGHT.

BY MR. DOAR:

Q. TO 398-6321 AT 6:27 A.M. FOR ONE MINUTE.

DO YOU KNOW WHOSE NUMBERS 398-6321 ARE?

A. NO, SIR.

Q. THE COMMITTEE HAS INFORMATION THAT THAT IS MR. BORDERS' NUMBER.

NOW, DO YOU HAVE ANY RECOLLECTION OF JUDGE HASTINGS HAVING CALLED YOUR APARTMENT ON EITHER OF THOSE OCCASIONS?

A. SIR, I DON'T KNOW OF ANY OCCASION WHEN MR. HASTINGS

WOULD HAVE CALLED MY HOUSE AND IDENTIFIED HIMSELF. I HAVE NEVER SPOKEN TO HIM BEFORE HIS TRIAL.

Q. WELL, WERE THERE TIMES THAT PERSONS DID CALL YOUR APARTMENT LOOKING FOR MR. BORDERS?

A. I WOULD SAY THERE WERE PROBABLY MAYBE FIVE, SIX, SEVEN TIMES DURING THE WHOLE TIME I KNEW MR. BORDERS THAT A CALL WOULD HAVE COME TO MY HOUSE, INCLUDING HIS LAW PARTNER.

Q. WELL, YOU KNEW MR. BORDERS FOR TWO AND A HALF -- LET'S SEE, FOR HOW MANY YEARS? YOU MET HIM IN 1980?

A. IT WAS ABOUT 1980.

Q. AND WHAT PERIOD OF TIME ARE YOU SAYING IT WAS THAT THESE FIVE OR SIX CALLS MIGHT HAVE COME TO YOUR HOUSE?

A. PROBABLY FROM AROUND MAYBE JANUARY, FEBRUARY.

Q. OF 1980?

A. UNTIL ABOUT THE SUMMER.

Q. JANUARY OR FEBRUARY OF 1980 OR '81?

A. 1981.

Q. UNTIL THE SUMMER OF 1981?

A. UNTIL ABOUT THE SUMMER. MIDDLE OF THE SUMMER, I GUESS, TO THE END OF THE SUMMER.

Q. WELL, YOU WENT TO THE FIGHT --

A. IN SEPTEMBER.

Q. IN SEPTEMBER:

A. YES, SIR.

Q. SO YOU HAD A FRIENDLY RELATIONSHIP WITH MR. BORDERS

CERTAINLY UP THROUGH SEPTEMBER OF 1981?

A. THAT'S CORRECT.

Q. OKAY. NOW, YOU SAY THAT DURING THAT PERIOD OF TIME THERE MAY HAVE BEEN FIVE OR SIX OCCASIONS WHEN SOMEONE WOULD CALL MR. BORDERS?

A. TO SEE IF HE WERE AT MY HOUSE.

Q. CALL YOUR TELEPHONE TO SEE IF MR. BORDERS WAS THERE?

A. THAT'S CORRECT.

Q. AND DO YOU HAVE ANY RECOLLECTION OF ANY OF THE PEOPLE WHO CALLED?

A. THE ONLY PERSON WHOSE NAME I -- NO. PUT IT THIS WAY. THE ONE WHOSE VOICE I RECOGNIZED WOULD HAVE BEEN HIS LAW PARTNER.

Q. WHO WAS THAT?

A. MR. WILLIAMS.

Q. WHAT IS HIS FIRST NAME? DUDLEY?

A. DUDLEY WILLIAMS.

Q. WAS DUDLEY WILLIAMS THE PERSON THAT MET YOU AT THE AIRPORT WHEN YOU GOT BACK FROM LAS VEGAS?

A. THAT'S CORRECT.

Q. SO YOU KNEW DUDLEY WILLIAMS?

A. I KNEW HIS VOICE.

Q. BUT THERE WERE OTHER OCCASIONS WHEN OTHER PEOPLE CALLED WHOSE VOICES YOU DID NOT RECOGNIZE?

A. THAT'S CORRECT.

Q. AND THOSE PERSONS, AS I UNDERSTAND IT, NEVER IDENTIFIED THEMSELVES?

A. I DON'T RECALL THAT THEY DID, SIR.

Q. WERE YOU THE PERSON THAT WOULD USUALLY ANSWER THE PHONE?

A. NORMALLY, I WAS THE PERSON WHO WOULD ANSWER THE PHONE.

Q. NOW, THE COMMITTEE ALSO HAS RECEIVED INFORMATION, MS. PETTY, THAT ON MAY 5TH, 1981, A PERSON FROM THE TELEPHONE, THE HOME TELEPHONE NUMBER OF A MAN NAMED WILLIAM BREDGE IN MIAMI CALLED YOUR APARTMENT. DO YOU KNOW A WILLIAM BREDGE?

A. NO, SIR.

Q. LET ME JUST PLACE BEFORE YOU A PART OF EXHIBIT 2046. IF YOU RUN DOWN CLOSE TO THE BOTTOM OF THE PAGE AND COME UP YOU WILL SEE A WASHINGTON CALL. DO YOU SEE THAT CALL, 202-829-3450?

A. YES, SIR.

Q. AND IT'S A CALL AT 11:24, AND IT'S A ONE MINUTE CALL?

A. YES, SIR.

Q. OKAY. NOW, AND IF YOU GO OVER ALL THE WAY YOU SEE THAT THE CALL IS 2326 WHICH INDICATES IT'S A P.M. CALL.

A. I SEE.

Q. NOW, DO YOU HAVE ANY RECOLLECTION OF A PERSON CALLING YOUR NUMBER AT THAT TIME AND ASKING FOR MR. BORDERS?

A. I HAVE NO RECOLLECTION OF IT. I WOULD NOT SAY THAT IT DID NOT OCCUR.

Q. THE COMMITTEE DOES HAVE INFORMATION, MS. PETTY, THAT MR. DREDGE DID KNOW MR. BORDERS AT THAT TIME, AND, OF COURSE, THE COMMITTEE HAS INFORMATION THAT MR. BORDERS AND JUDGE HASTINGS WERE FRIENDS OF LONG STANDING AT THAT TIME.

BUT AS YOU SIT HERE NOW, IN TESTING YOUR MEMORY AS BEST YOU CAN, YOU HAVE NO RECOLLECTION OR DO YOU HAVE ANY RECOLLECTION OF THOSE CALLS?

A. I HAVE NO RECOLLECTION OF A CALL EVER COMING TO MY HOUSE AND THE PERSON IDENTIFIED HIMSELF AS MR. HASTINGS NOR THE LAST NAME YOU JUST MENTIONED.

Q. OKAY.

A. NOR DO I KNOW HIM.

Q. AND DO YOU KNOW WHETHER OR NOT MR. BORDERS WAS AT YOUR HOME ON THE NIGHT OF MAY 5TH AT 11:26 AND UNTIL SHORTLY AFTER MIDNIGHT ON THE MORNING OF MAY 6TH?

A. SIR, I REALLY CAN'T REMEMBER THAT, BUT I WOULD LIKE TO JUST SAY THIS. I NOTICE THAT ON THE PHONE CALLS THAT YOU SHARED WITH ME, THEY WERE VERY SHORT CALLS WHICH WOULD -- ONE MIGHT ASSUME THAT MEANS MR. BORDERS WAS NOT THERE. I DON'T KNOW.

Q. WELL, IT IS CORRECT, MS. PETTY, THAT THE CALL ON THE 11TH OF MAY IS A ONE MINUTE CALL, AND THE CALL FROM MR. DREDGE'S TELEPHONE IS A ONE MINUTE CALL. THE CALL FROM MADISON, NEW JERRY IS A TWO MINUTE CALL, A LITTLE LONGER.

CAN YOU, AS YOU SIT HERE NOW, SHED ANY LIGHT AT ALL ON

WHETHER OR NOT YOU HAD ANY KNOWLEDGE OR INFORMATION THAT MR. BORDERS AND JUDGE HASTINGS WERE IN TOUCH WITH EACH OTHER WHILE MR. BORDERS WAS AT YOUR HOME?

A. I HAVE NO INDICATION OF THAT, SIR.

Q. IT IS CLEAR, IS IT NOT, THAT BASED UPON YOUR TESTIMONY THAT JUDGE HASTINGS WOULD HAVE NO REASON TO CALL YOU?

A. WOULD HAVE NO REASON TO CALL ME.

Q. AND WILLIAM DREDGE WOULD HAVE NO REASON TO CALL YOU?

A. NO, SIR.

MR. DOAR: THAT IS ALL THE QUESTIONS.

JUDGE POINTER: YOU HAVE INDICATED THERE WERE FIVE OR SIX OCCASIONS DURING THAT PERIOD WHEN SOMEONE CALLED LOOKING FOR MR. BORDERS AT YOUR RESIDENCE.

THE WITNESS: YES, SIR.

JUDGE POINTER: YOU HAVE INDICATED THAT AT LEAST ON ONE OCCASION, PERHAPS MORE, MR. BORDERS WAS NOT THERE WHEN SUCH A CALL CAME IN.

THE WITNESS: NO, SIR. IF I SAID THAT, I MISSPOKE.

WHAT I INDICATED WAS THAT THE ONE TIME I RECOGNIZED A VOICE AND CAN TELL YOU WHO HAD CALLED MY HOUSE WAS HIS LAW PARTNER BUT THAT I KNEW HIS VOICE, BUT ON THE OTHER OCCASIONS IF SOMEONE CALLED, I MEAN, I CAN'T TELL YOU IF HE WERE THERE OR NOT.

JUDGE POINTER: YOU DON'T KNOW WHO THE OTHER PEOPLE WERE CALLING?

THE WITNESS: THAT'S CORRECT.

JUDGE POINTER: WERE THERE OCCASIONS WHEN YOU GOT CALLS DURING THAT PERIOD OF TIME, SOME FIVE OR SIX TIMES, THAT MR. BORDERS WAS IN FACT AT YOUR RESIDENCE AND ANSWERED THE PHONE?

THE WITNESS: OH, I DON'T THINK -- IF I WAS THERE, HE WOULD NOT HAVE ANSWERED MY PHONE.

JUDGE POINTER: OKAY. I DIDN'T THE ASK THE QUESTION RIGHT.

THE WITNESS: SORRY.

JUDGE POINTER: HOW MANY OCCASIONS DURING THAT PERIOD OF TIME DID SOMEONE CALL FOR MR. BORDERS AND HE BE THERE AND TAKE THE MESSAGE AFTER YOU FOUND IT WAS FOR HIM?

THE WITNESS: I JUST DON'T KNOW, BUT I WILL JUST SAY MAYBE TWICE. I REALLY DON'T HAVE A PRECISE NUMBER, SIR.

JUDGE POINTER: WERE THERE SOME OCCASIONS DURING THAT PERIOD OF TIME IN WHICH A PERSON WOULD CALL FOR MR. BORDERS AND HE WOULD BE THERE AND WOULD TAKE THE CALL AFTER YOU FOUND IT WAS FOR HIM?

THE WITNESS: I CAN SAY I KNOW AT LEAST ONCE.

JUDGE POINTER: WERE THERE OTHER OCCASIONS DURING THIS PERIOD IN WHICH SOMEONE WOULD CALL FOR MR. BORDERS AND HE NOT BE THERE?

THE WITNESS: OH, YES.

JUDGE POINTER: AND YOU WOULD SIMPLY SAY, "WELL, HE'S

NOT HERE."

THE WITNESS: THAT'S CORRECT.

JUDGE GODBOLD: ANYTHING FURTHER?

JUDGE O'KELLEY: DID YOU EVER TAKE A MESSAGE FOR HIM OF A CALL TO RETURN?

THE WITNESS: SIR, I DON'T RECALL ANYBODY EVER GIVING ME A MESSAGE TO TAKE. IT WOULD SIMPLY BE A MATTER, "DOES HE HAPPEN TO BE THERE?"

I WOULD SAY NO.

THEY WOULD SAY, "THANK YOU."

JUDGE POINTER: WERE THERE OCCASIONS DURING THAT PERIOD OF TIME IN WHICH HE COULD HAVE BEEN THERE, MR. BORDERS, AT AN EARLY MORNING HOUR OR RIGHT AFTER MIDNIGHT SO THAT ONE COULD NOT TELL FROM THE TIME A CALL WAS PLACED WHETHER HE WAS OR WASN'T THERE?

THE WITNESS: YEAH. THERE WERE TIMES WHEN MR. BORDERS WAS AT MY HOUSE AT 11:30 OR 12:00 O'CLOCK.

JUDGE POINTER: AND MIGHT HAVE SPENT THE NIGHT AND BEEN THERE IN THE MORNING?

THE WITNESS: NOT NECESSARILY, BUT WOULD HAVE BEEN THERE ABOUT MIDNIGHT.

JUDGE POINTER: WOULD THERE HAVE BEEN A TIME WHEN HE MIGHT HAVE BEEN THERE EARLY IN THE MORNING LIKE 6:00 OR 7:00 IN THE MORNING?

THE WITNESS: MAYBE ON ONE OR TWO OCCASIONS.

JUDGE POINTER: OKAY.

MR. DOAR: I HAVE NOTHING FURTHER.

JUDGE TJOFLAT: MS. PETTY, YOU TESTIFIED THAT THE FIRST TIME YOU SAW JUDGE HASTINGS WAS WHEN YOU TESTIFIED IN THIS TRIAL.

THE WITNESS: EXCEPT PICTURES, YES, SIR.

JUDGE TJOFLAT: EXCEPT PICTURES.

THE WITNESS: YES, SIR.

JUDGE TJOFLAT: WHEN IS THE FIRST TIME YOU HEARD HIS NAME MENTIONED BY ANYBODY?

THE WITNESS: OH, I PROBABLY HEARD JUDGE HASTINGS' NAME WHEN HE WAS APPOINTED TO THE BENCH.

JUDGE TJOFLAT: ALL RIGHT. FROM WHOM DID YOU HEAR THE NAME?

THE WITNESS: I THINK I READ IT IN JET MAGAZINE OR MAYBE THE NEWSPAPER.

JUDGE TJOFLAT: DID YOU EVER HEAR MR. BORDERS MENTION HIS NAME?

THE WITNESS: I HAD HEARD MR. BORDERS MENTION HIS NAME THAT HE WAS A FRIEND OF HIS.

JUDGE TJOFLAT: HOW LONG IN ADVANCE OF THE TIME WHEN HE WAS ARRESTED ON OCTOBER 9, 1981 DID YOU HEAR MR. BORDERS MENTION JUDGE HASTINGS' NAME?

THE WITNESS: GOSH. LET'S SEE. I DON'T KNOW. I DON'T HAVE ANY RECOLLECTION OF MR. BORDERS MENTIONING MR.

HASTINGS' NAME TO ME OFTEN, BUT, I MEAN, I KNEW THAT THEY WERE FRIENDS. I HAD HEARD THEY WERE FRIENDS.

JUDGE TJOFLAT: WAS THAT YOUR KNOWLEDGE SHORTLY AFTER YOU MET MR. BORDERS?

THE WITNESS: THAT THEY KNEW EACH OTHER, YES, SIR.

JUDGE TJOFLAT: AND THAT THEY WERE FRIENDS?

THE WITNESS: YES, SIR.

JUDGE TJOFLAT: WERE YOU GOING WITH MR. BORDERS TO THE GALA AFFAIR ON THE NIGHT OF OCTOBER 9TH, 1981?

THE WITNESS: NO, SIR.

JUDGE TJOFLAT: YOU WERE NOT GOING TO BE THERE WITH HIM?

THE WITNESS: NO, SIR.

JUDGE GODBOLD: ANY FURTHER QUESTIONS? MR. DOAR, ANY FURTHER QUESTIONS?

MR. DOAR: NOTHING, YOUR HONOR.

THE COURT: THANK YOU, MS. PETTY.

THE WITNESS: AM I EXCUSED TO GO BACK TO D. C.?

JUDGE GODBOLD: YOU ARE EXCUSED, YES.

JUDGE TJOFLAT: ONE OTHER QUESTION.

THE WITNESS: YES, SIR.

JUDGE TJOFLAT: DID NOEL SMITH TO YOUR KNOWLEDGE HAVE YOUR TELEPHONE NUMBER?

THE WITNESS: I DON'T KNOW. SHE COULD HAVE. MY NUMBER IS LISTED, SO MS. SMITH MIGHT HAVE HAD IT.

JUDGE TJOFLAT: ALL RIGHT.

BY MR. DOAR:

Q. WHEN YOU SAY YOUR NUMBER IS LISTED, YOU MEAN IT'S PUBLISHED IN THE DIRECTORY?

A. IT'S IN THE PHONE BOOK.

JUDGE TJOFLAT: WAS IT IN 1981?

THE WITNESS: IT'S ALWAYS BEEN, SIR.

JUDGE TJOFLAT: HOW IS IT LISTED?

THE WITNESS: M. C. PETTY.

JUDGE GODBOLD: THANK YOU.

THE WITNESS: I'M EXCUSED?

JUDGE GODBOLD: YOU ARE EXCUSED.

THE WITNESS: THANK YOU VERY MUCH.

SHALL I LEAVE THESE HERE?

MR. DOAR: JUST LEAVE THOSE HERE. I WILL GET THEM.

MRS. ROMANO.

THE CLERK: MRS. ROMANO, COME INTO THE COURTROOM PLEASE.

RAISE YOUR RIGHT HAND, PLEASE.

YOU DO SOLEMNLY SWEAR THE TESTIMONY YOU ARE ABOUT TO GIVE SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

THE WITNESS: I DO.

THE CLERK: BE SEATED, PLEASE, AND STATE YOUR FULL NAME FOR THE RECORD.

The **Chairman**. Will the House call its next witness?

Mr. **Bryant**. The House calls Robert Richter.

The **Chairman**. Would you raise your right hand, please? Do you, Robert Richter, swear and affirm that the evidence you shall give in the case now pending between the United States and Judge Alcee L. Hastings shall be the truth, the whole truth, and nothing but the truth, so help you God?

Judge **Richter**. I do.

The **Chairman**. Please be seated.

Mr. **Synar**. Go ahead and pull that microphone down. Good afternoon. Please state your full name.

TESTIMONY OF JUDGE ROBERT I. RICHTER

DIRECT EXAMINATION

Judge **Richter**. Robert Isaac Richter.

Mr. **Synar**. And what is your profession?

Judge **Richter**. I am an associate judge of the Superior Court of the District of Columbia.

Mr. **Synar**. And how long have you been a judge?

Judge **Richter**. Since October, 1984.

Mr. **Synar**. Now, were you employed prior to becoming a judge?

Judge **Richter**. Yes, I was.

Mr. **Synar**. And what was your position?

Judge **Richter**. I was the assistant chief for operations of the Public Integrity Section at the Criminal Division of the U.S. Department of Justice.

Mr. **Synar**. When was that?

Judge **Richter**. From 1978 to 1984.

Mr. **Synar**. Now, in 1981, as the chief of that division, were you at any time assigned to a case involving the respondent, Judge Hastings?

Judge **Richter**. I was not the chief of the division. I was assistant chief, and the answer is yes.

Mr. **Synar**. OK. Good. And what was that case?

Judge **Richter**. I assisted in the litigation of the indictments that were returned from the grand jury against Mr. Borders and Judge Hastings.

Mr. **Synar**. And what was your role in the case?

Judge **Richter**. After the arrest of Mr. Borders, I was assigned to assist in the trial or litigation of any matters that arose from the case, and I was also the supervisor within the section that had oversight of the case.

Mr. **Synar**. Who was the lead counsel?

Judge **Richter**. Reid Weingarten.

Mr. **Synar**. And you were his assistant counsel?

Judge **Richter**. I worked with him.

Mr. **Synar**. All right. So you were involved in the preparation for trial and the trial of the case; correct?

Judge **Richter**. Yes, sir.

Mr. **Synar**. And when was the case indicted?

Judge **Richter**. I believe December 29, 1981.

Mr. **Synar**. And when was the case against Judge Hastings actually tried?

Judge **Richter**. January, 1983.

Mr. **Synar**. And who was the judge assigned to try that criminal case?

Judge **Richter**. It was Judge Edward Thaxter Gignoux from the Federal court in Maine.

Mr. **Synar**. Now, during the course of the pretrial proceedings, did Judge Gignoux issue a discovery order?

Judge **Richter**. Yes.

Mr. **Synar**. And as a result of that order, did the Government and the defense exchange tangible evidence which they expected to introduce at the trial?

Judge **Richter**. Yes.

Mr. **Synar**. Now, turning to the trial itself, Judge, let me show you what has already been introduced as House Exhibit 54B. Do you recognize the conversation that is transcribed?

Judge **Richter**. Yes, I do.

Mr. **Synar**. And what is that conversation?

Judge **Richter**. This was a tape recorded conversation from a Title III on Mr. Borders' law office between Judge Hastings and Mr. Borders on October 5, 1981.

Mr. **Synar**. Now, was the tape recording of this conversation among the items which the Government provided to the defense in discovery?

Judge **Richter**. Yes, sir.

Mr. **Synar**. And when was it turned over?

Judge **Richter**. I believe we turned the tape, a cassette tape over to the counsel to Judge Hastings at the very first discovery meeting shortly after the discovery order, initial discovery order was issued.

Mr. **Synar**. So in mid-January?

Judge **Richter**. I believe so.

Mr. **Synar**. OK. Now, was that conversation offered into evidence by the Government in the 1983 criminal trial of Judge Hastings?

Judge **Richter**. Yes, sir.

Mr. **Synar**. And what was the Government theory with regard to the relevance of that conversation?

Judge **Richter**. It was our theory that the conversation was a cryptic, coded discussion between Judge Hastings and Mr. Borders wherein Judge Hastings was letting Mr. Borders know that he had drafted—or that the order returning the property had been completed, and Mr. Borders was letting Judge Hastings know that he had had further contact with the undercover agent.

Mr. **Synar**. And what was the defense's response to that argument?

Judge **Richter**. Judge Hastings had testified at trial that the conversation did not in any way deal with the *Romano* case, and that it was a discussion regarding efforts that the two men had undertaken to assist Hemphill Pride in getting readmitted to the bar in South Carolina.

Mr. **Synar**. Now, did Judge Hastings testify to that effect at his trial?

Judge **Richter**. Yes, sir.

Mr. **Synar**. And did he offer any documentary evidence or support of his testimony of that conversation about those letters written on behalf of Hemphill Pride?

Judge **Richter**. Yes, he did.

Mr. **Synar**. Let me show you what has been marked as Exhibit 154. Could you identify this exhibit?

Judge **Richter**. Yes.

Mr. **Synar**. Now, do these pages that make up House Exhibit 154 appear to be the letters offered into evidence by Judge Hastings at his criminal trial?

Judge **Richter**. Yes.

Mr. **Synar**. Mr. Chairman, at this time, I would offer House Exhibit 154 into evidence.

The **Chairman**. Is there objection?

Mr. **Anderson**. No objection.

The **Chairman**. House Exhibit 154 will be admitted.

[The document referred to was marked House Exhibit No. 154 and was received in evidence.]

Mr. **Synar**. Now, were these letters provided to the Government by the defense as part of their pretrial discovery process?

Judge **Richter**. Yes, sir.

Mr. **Synar**. OK. Mr. Chairman, at this time, I would offer Stipulations 208, 209, 210, 220, and 226 into evidence. And with your agreement, I will read these into the record.

The **Chairman**. Is there objection to those stipulations? Does counsel need those listed again?

Mr. **Anderson**. If I could.

Mr. **Synar**. 208, 209, 210, 220, and 226.

The **Chairman**. They will be admitted.

[Stipulation Nos. 208, 209, 210, 220, and 226 were received in evidence.]

The **Chairman**. You can go through those and read them if that is your choice.

Mr. **Synar**. Thank you, Mr. Chairman.

Stipulation 208: Pursuant to the January 19, 1982, discovery order in *United States* v. *Hastings,* No. 82-596-Cr. ETG (S.D. Florida), the defense, in mid-February 1982, filed "Defendant's Reciprocal Discovery Inventory No. 1."

Stipulation 209: No letters or any drafts of letters about or to "Hemp" or Hemphill Pride written by Judge Hastings were included in Judge Hastings' production in mid-February 1982, pursuant to the January 19, 1982, reciprocal discovery order in *United States* v. *Hastings*.

Stipulation No. 210: During his representation of Judge Hastings, Joel Hirschhorn, counsel for Judge Hastings from January 12, 1982, through March 2, 1982, never saw any letters or any drafts of letters about or to "Hemp" or Hemphill Pride written by Judge Hastings.

Stipulation 220: In December 1982, Judge Hastings produced for the prosecution handwritten letters regarding Hemphill Pride, which Judge Hastings testified in *United States* v. *Hastings* were drafted on October 5, 1981.

And Stipulation 226: In *United States* v. *Hastings*, Judge Hastings' trial defense was conducted by Judge Hastings and Patricia Williams.

Now, in addition to those letters, Judge Richter, did Judge Hastings present other testimony in support of his theory an October 5th conversation was helping Hemphill Pride?

Judge RICHTER. Yes, he did.

Mr. SYNAR. All right. Did he offer any documentary support to his testimony?

Judge RICHTER. He testified at some length and detail regarding efforts that he had made over time to help Mr. Pride, and I believe the phone records regarding calls to Mr. Pride had been introduced.

Mr. SYNAR. So specific phone records were presented?

Judge RICHTER. Yes, sir.

Mr. SYNAR. Let me show you what has been marked as House Exhibits 27A, 210 and 211. Can you identify these?

Judge RICHTER. I have no specific recollection of the specific phone records, but they were phone records of this sort that were introduced in support of the testimony.

Mr. SYNAR. So these appear to be the documents that Judge Hastings referred to during his testimony at the criminal trial concerning the calls in which he and Mr. Borders made to Pride in the summer of 1981?

Judge RICHTER. Yes.

Mr. SYNAR. OK. Now, Mr. Chairman, at this time, I would offer House Exhibits 210 and 211 into evidence, and also 27A which has already been accepted.

The CHAIRMAN. Is there objection to the admission of those House exhibits?

Mr. ANDERSON. No.

The CHAIRMAN. They will be admitted.

[The documents referred to were marked House Exhibit Nos. 27A, 210, and 211 and were received in evidence.]

Mr. SYNAR. Finally, Judge Richter, what was the beginning date of the conspiracy and the indictment and the criminal charges?

Judge RICHTER. I believe in the neighborhood of September 10th. I have not looked at the indictment in a long time.

Mr. SYNAR. Was any of the evidence about events in the Trafficante bribery scheme which occurred prior to September 10th presented to the jury?

Judge RICHTER. No, sir. It was studiously avoided by all concerned.

Mr. SYNAR. OK. Mr. Chairman, at this time, I would like to offer the following House exhibits into evidence: 148, the docket sheet in *United States* v. *Hastings;* 149, standing discovery order in *United States* v. *Hastings;* 150, discovery inventory in *United States* v. *Hastings;* 151, a letter from Reid Weingarten to Joel Hirschhorn, January 19, 1982; 152, defendant's reciprocal discovery inventory No. 1 in *United States* v. *Hastings;* and 153, defendant's supplemental discovery inventory in *United States* v. *Hastings*.

The CHAIRMAN. Is there objection to the admission of those exhibits?

Mr. ANDERSON. No.

The CHAIRMAN. They will be admitted.

[The documents referred to were marked House Exhibit Nos. 148, 149, 150, 151, 152, and 153 and were received in evidence.]

Mr. SYNAR. Finally, Mr. Chairman, offering stipulations into evidence, but these do not have to be read into the record: Stipulations 202 through 207, 211 through 215, 217 through 219, 225, 227, and 228.

The CHAIRMAN. Is there objection to those stipulations?

Mr. ANDERSON. No objection.

The CHAIRMAN. They will be admitted.

[Stipulation Nos. 202 through 207, 211 through 215, 217 through 219, 225, 227 and 228 were received in evidence.]

The stipulations are as follows:

Stipulation No. 202: Grand Jury 81-1 (MIA) returned an indictment against William Borders and Judge Hastings on December 29, 1981.

Stipulation No. 203: Grand Jury 81-1 (MIA) indicted William Borders on four counts. The first count charged Borders with conspiring to solicit a sum of money from criminal defendants in return for Alcee L. Hastings' being influenced in the performance of official acts as a Federal judge, in violation of 18 U.S.C. 371. The second count charged Borders with corruptly influencing, obstructing and impeding justice and endeavoring to do so in violation of 18 U.S.C. 1503. This count alleged that Judge Hastings had informed Borders of the substance and date of issuance of the forfeiture order he was preparing and that Borders had passed the information to a person, Paul Rico, whom he believed to be a defendant in the *Romano* case. Counts three and four alleged that Borders, in violation of 18 U.S.C. 1952, traveled in interstate commerce with the intent to promote, carry on and facilitate the promotion and carrying on of an unlawful activity, namely a bribery in violation of 18 U.S.C. 201.

Stipulation No. 204: Grand Jury 81-1 (MIA) indicted Alcee L. Hastings on two counts. The first count charged Alcee L. Hastings with conspiring to solicit a sum of money from criminal defendants in return for Alcee L. Hastings' being influenced in the performance of official acts as a Federal judge, in violation of 18 U.S.C. 371. The second count charged Alcee L. Hastings with corruptly influencing, obstructing and impeding justice and endeavoring to do so in violation of 18 U.S.C. 1503. This count alleged that Alcee L. Hastings had informed Borders of the substance and date of issuance of the forfeiture order that he was preparing and that Borders had passed the information to a third person, Paul Rico, whom Borders believed to be a defendant in the *Romano* case.

Stipulation No. 205: *United States* v. *Hastings*, No. 81-596-Cr. ETG (S.D. Florida), was assigned to Judge Edward T. Gignoux on January 4, 1981, sitting by designation.

Stipulation No. 206: On January 19, 1982, Judge Gignoux issued an order in *United States* v. *Hastings*, No. 82-596-Cr. ETG (S.D. Florida, requiring the defendant to produce for the Government, *inter alia*, those documents he intended to introduce as evidence in chief at the trial and requiring the Government to produce, *inter alia*, all written or recorded statements made by the defendant.

Stipulation No. 207: Pursuant to the January 19, 1982, discovery order in *United States* v. *Hastings*, No. 81-596-Cr. ETG (S.D. Florida), the prosecution produced various documents on January 19, 1982, including the tapes of the intercepted telephone calls between Judge Hastings and William Borders.

Stipulation No. 211: Joel Hirschhorn withdrew as counsel for Judge Hastings on March 2, 1982.

Stipulation No. 212: On February 1, 1982, Judge Hastings filed a motion in *United States* v. *Hastings*, No. 81-596-Cr. ETG (S.D. Florida), to quash his indictment and dismiss the criminal proceedings against him for lack of jurisdiction, in which he argued that a sitting Federal judge had to be impeached before a criminal prosecution could proceed.

Stipulation No. 213: On March 2, 1982, Judge Hastings' trial in *United States* v. *Hastings*, No. 81-596-Cr. ETG (S.D. Florida), was stayed pending the interlocutory appeal of the motion he had filed challenging his prosecution prior to impeachment.

Stipulation No. 214: On March 2, 1982, in *United States* v. *Hastings*, No. 82-596-Cr. ETG (S.D. Florida), Judge Edward T. Gignoux granted William Borders' motion for change of venue of his trial and ordered his case to be tried in Atlanta, Georgia.

Stipulation No. 215: William Borders was tried before a jury in Atlanta, Georgia, from March 22, 1982, until March 29, 1982.

Stipulation No. 217: The jury in *United States* v. *Borders*, (No. CR-82-75-A), convicted Borders on all counts on March 29, 1982.

Stipulation No. 218: Andrew Mavrides, an attorney then representing Judge Hastings, attended William Borders' trial in March 1982, as an observer, and ordered and received copies of the trial transcript.

Stipulation No. 219: On July 12, 1982, the United States Court of Appeals for the Eleventh Circuit upheld the trial court's denial of Judge Hastings' motion to quash his indictment and dismiss in *United States* v. *Hastings*.

Stipulation No. 225: The trial in *United States* v. *Hastings*, No. 81-596-Cr. ETG (S.D. Florida), was held in Miami, Florida, beginning January 19, 1983, and continuing until February 4, 1983.

Stipulation No. 227: In *United States* v. *Hastings*, No. 81-596-Cr. ETG (S.D. Florida), William Borders was not called to testify.

Stipulation No. 228: In *United States* v. *Hastings*, No. 82-596-Cr. ETG (S.D. Florida), Judge Hastings took the stand, appearing as the final witness in his defense.

Mr. SYNAR. That concludes our direct, Mr. Chairman.

The CHAIRMAN. Cross-examination of the witness?

CROSS EXAMINATION

Mr. ANDERSON. Yes, Mr. Chairman.

Now, if I understood your testimony, Judge Richter, you were not involved in any of the negotiations with William Dredge or that problem directly; is that correct?

Judge RICHTER. That is correct.

Mr. ANDERSON. And it was not until after Mr. Borders' arrest that you assumed both supervisory and assisting responsibility in this case?

Judge RICHTER. That is correct.

Mr. ANDERSON. And at the time you entered this case, you thought of yourself, I think, as a relatively experienced prosecutor, did you not?

Judge RICHTER. Well, everything is relative, Mr. Anderson. I was not a novice.

Mr. ANDERSON. You were not a novice. And I take it that in your view and the view of the Public Integrity Section and the Justice Department, Reid Weingarten was not a novice trial attorney?

Judge RICHTER. That is correct.

Mr. ANDERSON. And, in fact, he had just recently completed working on the prosecution of Congressman Jenrette; is that correct?

Judge RICHTER. I believe so.

Mr. ANDERSON. Now, turning to the question of the discovery, there are a couple of other dates I think that may bear upon that. In the first instance, when Mr. Hirschhorn was still in the case and gave you your discovery, he explicitly labeled it Discovery Production No. 1, did he not?

Judge RICHTER. That is correct.

Mr. ANDERSON. And in the course of your conversations at that time, if I recall your testimony before, he said it is No. 1, and there may be No. 2 and No. 3 and No. 4 and No. 5 and so on. Do you recall that?

Judge RICHTER. Yes, sir.

Mr. ANDERSON. And in your experience as a criminal prosecutor, is it unusual that the defendant does not come forth with everything right at the outset of the discovery period?

Judge RICHTER. It would be unusual if it was something that was in existence and that was known, certainly, yes.

Mr. ANDERSON. So you have never had a defendant come up towards the other end or wait until the judge ordered him to do it to produce documents that had been in existence previously at the time of the crime or, indeed, even older documents?

Judge RICHTER. Well, if there is an item that a lawyer believes they can make a colorable argument that they did not think it was discoverable, it happens all the time. Unfortunately, that is what clogs up the civil courts. But usually it is something that they feel they can make a credible argument as to why it was not produced.

Mr. ANDERSON. So you have not had the occasion where on the eve of trial the defense has produced documents that you thought should have been produced a gosh darn long time ago.

Judge RICHTER. I did in this case.

Mr. ANDERSON. I was asking about other cases.

Judge RICHTER. No, sir.

Mr. ANDERSON. You have not?

Judge RICHTER. No.

Mr. ANDERSON. You recall the first motion Judge Hastings filed was a constitutional challenge to the right of the executive to exercise prosecutorial discretion before the House had exercised its; do you recall that?

Judge RICHTER. I certainly recall it. I do not know if it was the first one. It was among a very large number of motions that were filed early on.

Mr. ANDERSON. There also came a time, did there not, when that motion was denied?

Judge RICHTER. That's correct.

Mr. ANDERSON. And in a proper manner, counsel for Judge Hastings filed a notice of appeal. Do you recall that?

Judge RICHTER. Yes.

Mr. ANDERSON. And looking at the docket, can you tell what the date of that notice of appeal was?

Judge RICHTER. I'm not sure what the docket is here.

Mr. ANDERSON. I think it's that——

Judge RICHTER. It has Mr. Borders' name on top. Would that be the docket we're referring to?

Mr. ANDERSON. It is House Exhibit 148?

Judge RICHTER. Yes.

Mr. ANDERSON. And if you, I think, look forward to the entry for February 26th, it's about where you want to get, and you want to stay on that page and the next for a moment.

Judge RICHTER. I see it.

Mr. ANDERSON. And can you tell from that on what date the notice of appeal was filed?

Judge RICHTER. I assume it was February 26th.

Mr. ANDERSON. Now, there's been some testimony in another case, but is it my understanding that the filing of a proper notice of appeal, appealing from any final order, divests the district court of jurisdiction, ordinarily?

Judge RICHTER. Over most matters, yes.

Mr. ANDERSON. Over most matters. And in this case, Judge Gignoux had not merely ruled from the bench; he had entered a written order, had he not?

Judge RICHTER. That's correct.

Mr. ANDERSON. And whatever doubts about the jurisdiction of the court over matters with respect to Judge Hastings were resolved on March 2nd when Judge Gignoux himself entered an order staying further proceedings, pending disposition of that appeal?

Judge RICHTER. That's right.

Mr. ANDERSON. So there were no proceedings with respect to Judge Hastings in the district court from March 2d, 1981, until Judge Gignoux authorized further proceedings, is that correct?

Judge RICHTER. That's correct.

Mr. ANDERSON. And the government was under no duty to make any disclosures or produce anything for the defense and the defense was under no duty to do anything with respect to the government other than what their obligations in the court of appeals during that period, is that correct?

Judge RICHTER. I would not make that conclusion. We had an outstanding indictment with an ongoing discovery obligation, a proper discovery order that had been entered, and I certainly—had we had additional information, I assume we would have turned it over at that point.

Mr. ANDERSON. All right. Apart from your assumption, am I correct that you could not have filed, for example, a motion in the district court to compel that turning over, could you?

Judge RICHTER. That's correct.

Mr. **Anderson**. And Judge Hastings could not have filed a motion in the trial court to compel you to do anything, could he have?

Judge **Richter**. That's correct.

Mr. **Anderson**. And in point of fact, throughout that period you did not file any motions in the trial court relating to Judge Hastings, did you?

Judge **Richter**. That's correct.

Mr. **Anderson**. And during that period, Judge Hastings did not file any motions asking you to do anything, did he?

Judge **Richter**. I believe that's correct.

Mr. **Anderson**. But when the case finally resumed, both sides were fairly active—I think perhaps Judge Hastings more—in filing motions asking for people to do things, weren't they?

Judge **Richter**. Certainly, the case got active again, yes.

Mr. **Anderson**. Got active again. Now, do you recall when the case got active again?

Judge **Richter**. Not specifically. It was within a few months before the trial, I think.

Mr. **Anderson**. Well, do you recall that initially after the court of appeals ruled, there was interest in the government of getting the matter going again, but Judge Gignoux indicated he was going to permit the appellate proceedings to continue a bit before he reasserted jurisdiction?

Judge **Richter**. That sounds correct.

Mr. **Anderson**. And you recall that it was not until about October 19th that he conducted a telephone conference with counsel and set the matter down for a status conference in early November?

Judge **Richter**. I don't remember that specific dates. I do remember, though, as you said, that we tried to move it along more quickly than Judge Gignoux seemed inclined to do.

Mr. **Anderson**. From the docket, could you tell when matters got active again in the Hastings case?

Judge **Richter**. Interestingly, I'm noticing as I look at the docket, Mr. Anderson, that Judge Hastings did file motions.

Mr. **Anderson**. And those related to the conditions of his bond?

Judge **Richter**. Yes.

Mr. **Anderson**. So he could travel?

Judge **Richter**. But the court had jurisdiction over—obviously, Judge Hastings, and we had no objection, that the trial court did maintain some jurisdiction over previously existing orders, such as the bond conditions, and those were in July. The matters seemed to start up again in October.

Mr. **Anderson**. And in terms of the court's continuing jurisdiction, who orally argued the appeal for the government?

Judge **Richter**. I did.

Mr. **Anderson**. And who orally argued for the respondent?

Judge **Richter**. You did.

Mr. **Anderson**. And did we have a colloquy there in the court of appeals about jurisdiction, whether jurisdiction was appropriate, whether this was an appealable order? Do you recall that?

Judge **Richter**. Oh, yes. That was one of the two issues, and that was one of the two that you prevailed on.

Mr. ANDERSON. I think it's almost the only one I prevailed on over the years. So at least it was subsequently determined that jurisdiction over *United States* v. *Hastings* was appropriately lodged in the Court of Appeals by my notice of appeal?

Judge RICHTER. That's correct.

Mr. ANDERSON. And looking at the docket, October 19th is the first time there's an indication the case has subsequently become active on things other than whether or not Judge Hastings could travel throughout the country?

Judge RICHTER. That's correct.

Mr. ANDERSON. And there after it is, again, a very active docket, is it not?

Judge RICHTER. There are a large number of entries.

Mr. ANDERSON. And as I recall, during this period is when Judge Hastings began filing motions asking the government to produce for interview deposition and ultimately at trial an informant named William Dredge. Do you recall that, sir?

Judge RICHTER. I recall that at some point, those sorts of motions were filed and heard by Judge Gignoux as to whether it was at the earlier point or the later point. I don't really recall.

Mr. ANDERSON. Well, between—and please refresh your recollection from the docket if you would like, but was it not before December 1st that the motions for interview and for deposition, or for deposition and interview, had been filed and urged by counsel for Judge Hastings?

Judge RICHTER. Well, if you want to direct me to an entry, I'll be happy to confirm that it's there.

Mr. ANDERSON. Well, for example, entry 150.

Judge RICHTER. It appears that there were—the motions were at that point in November and December.

Mr. ANDERSON. And entry 150—what was that entry? What was that file?

Judge RICHTER. Government's response to defendant's motion to depose confidential informant.

Mr. ANDERSON. And do you recall what the government's response was?

Judge RICHTER. Well, I——

Mr. ANDERSON. Did you agree that Judge Hastings should be permitted to depose, interview, or talk with William Dredge?

Judge RICHTER. No.

Mr. ANDERSON. And do you recall that in the course of that, one part of your agreement was that the materiality of William Dredge had not been established and that the government did not intend to call him as a witness at trial?

Judge RICHTER. I don't remember the specific arguments we made. Mr. Weingarten handled that aspect of that case. I do remember that—well go ahead.

Mr. ANDERSON. Well, let me do go ahead. You've testified that you studiously kept any reference to Santos Trafficante out of the trial. Wasn't one of the reasons for your keeping that out is that if you had brought in or altered the date, then William Dredge would have certainly have to have come forward? Isn't that correct?

Judge **Richter**. Well, the reason that I assumed we were keeping it out and why I was studious about it was that it was—would have been highly prejudicial and inflammatory towards Judge Hastings.

Mr. **Anderson**. And you had no——

Judge **Richter**. And I knew that we could not produce Mr. Dredge and did not want to build error into the record.

Mr. **Anderson**. And you also did not have sufficient evidence to frame an allegation that would have included Mr. Trafficante's case in it, is that—was that not the conclusion of the department?

Judge **Richter**. Absolutely.

Mr. **Anderson**. And when you said you could not produce Mr. Dredge, do you recall why you couldn't produce him?

Judge **Richter**. I certainly know that part of the original agreement with him was that he wouldn't have to testify, and the whole undercover scenario was set up so as not to have to rely on him in the least in a trial. And if I recollect, I'm not sure we knew for sure where he was.

Mr. **Anderson**. Well, do you recall that arrangements had been made to—I gather, shortly after the arrest Mr. Dredge's confidence in the Justice Department's ability to protect him went down, but that there were ultimately communications arrangements made through a Secret Service agent so that he could be contacted if that were necessary. Do you recall that?

Judge **Richter**. I don't remember the details. I do remember that there were one or two times that he was spoken to during this period.

Mr. **Anderson**. And do you recall that at trial and almost from the outset, long before discovery in that, Judge Hastings had made it clear that at least one aspect of his defense was what he styled rainmaking?

Judge **Richter**. That's correct.

Mr. **Anderson**. And do you recall that basically, as he described it, he said that William Borders engaged in an all-too-common practice where a lawyer, without foundation, holds himself out as having the power to fix cases in a judge's courtroom, to extract corrupt sums, and, in fact, the judge has no involvement? That was the essence of the defense he wanted to present at trial, was it not?

Judge **Richter**. I think that's fair.

Mr. **Anderson**. And were you aware at the time when you and Mr. Weingarten were resisting the production of the informant that the informant himself had reported that he, in the presence of William Borders, had overheard Mr. Borders make such claims with respect to other judges than Judge Hastings?

Judge **Richter**. I don't have any present recollection of that.

Mr. **Anderson**. Would you have been aware, if it is included in the FBI telexes going all the way back to the beginning, that such information had been provided by Mr. Dredge?

Judge **Richter**. Possibly, possibly not. I would have had no reason to ever review those telexes.

Mr. **Anderson**. You would have reviewed, I take it, the prosecution memorandum that was eventually submitted to gain approval to return the indictment?

Judge **Richter**. Yes.

Mr. ANDERSON. And if that information were in there, in that prosecution memorandum, you would have then been aware of it from some time prior to December 29, 1981, is that correct? Any information in that memo, you knew before the indictment was returned?

Judge RICHTER. Certainly.

Mr. ANDERSON. Now, do you recall what Judge Gignoux' position was on Judge Hastings' desire to use his rainmaking defense at trial?

Judge RICHTER. It was certainly the position that he could present his rainmaking defense. That was the defense that was presented.

Mr. ANDERSON. Well, was he permitted to call witnesses who were available and willing to testify as to the extent to which lawyers engaged in this practice?

Judge RICHTER. No. He denied those requests.

Mr. ANDERSON. Pardon?

Judge RICHTER. He—Judge Gignoux granted our motion to exclude those items.

Mr. ANDERSON. And do you recall the basis of the condition he imposed and the basis upon which he granted your motions to exclude those items? Well, let me try and refresh your——

Judge. RICHTER. Well, they weren't relevant is the reason. Specifically, the record will speak for itself. I don't recall the specific words and the specific basis for his ruling.

Mr. ANDERSON. Well, let me see if I can refresh your recollection today. Do you recall Judge Gignoux saying that unless Alcee Hastings could produce one witness who could testify that William Borders had made claims with respect to a judge other than Alcee Hastings, Judge Hastings could not introduce this evidence? Do you recall him doing that?

Judge RICHTER. I do not recall the specific words at all, no.

Mr. ANDERSON. But whatever was in the record were things you and Mr. Weingarten were aware of? Whatever he said from the bench, one or the other of you heard it, am I correct?

Judge RICHTER. We were in the courtroom and whatever——

Mr. ANDERSON. And you were getting daily transcript?

Judge RICHTER. That's correct.

Mr. ANDERSON. And you persisted in that objection throughout the trial, is that correct?

Judge RICHTER. I don't think the issue was raised throughout the trial.

Mr. ANDERSON. Well, do you recall Judge Hastings asking the Honorable William B. Hoeveler, a fairly distinguished judge of that court, to come forward and testify?

Judge RICHTER. Yes.

Mr. ANDERSON. Do you recall opposing that testimony?

Judge RICHTER. Yes.

Mr. ANDERSON. Do you recall winning that opposition? Judge Hoeveler never appeared before the jury to testify, did he?

Judge RICHTER. I know that at least one judge, I think, did. I remember—I'm not certain. I know there were several judges that were *voir dired* outside the presence of the jury and they were excluded, or several were excluded.

Mr. **Anderson**. But the one judge who did testify, if I recall—and please correct me if I'm wrong—was the judge who had the arrangement with Jeff Miller, who had negotiated with the judge about the ending date for Jeff Miller's term, is that correct?

Judge **Richter**. I believe so.

Mr. **Anderson**. Now, were you aware at this time that the FBI also had information that Mr. Borders had made claims with respect to other judges?

Judge **Richter**. I don't have any present recollection of that now.

Mr. **Anderson**. Well, let me pose the question, then, this way. As an experienced prosecutor, if you knew that a judge had conditioned—a presiding judge had conditioned the right of a defendant judge to introduce specific evidence in support of a principal defense on the judge's proving that an alleged co-conspirator had made representations that he had the power to control other federal judges, and if you as a responsible prosecutor had information showing that your informant was the witness who could have competently proved that, what would your duty ethically have been as a responsible prosecutor?

Judge **Richter**. If the judge said if you had evidence, if there was evidence of a certain fact, and unless it existed, something couldn't be proven, and I was aware of the fact, I would have the obligation, obviously, to make that known.

Mr. **Anderson**. And make it known to whom?

Judge **Richter**. To all involved.

Mr. **Anderson**. And so if either you or Mr. Weingarten were aware that William Dredge had told the government that William Borders had made representations that he had the power to influence judges other than Judge Hastings, and if Judge Gignoux had precluded Judge Hastings from introducing his evidence in support of his defense on the ground that he could not prove that fact, it at that moment became your duty to disclose to the judge that there was such evidence and it was through the informant, did it not?

Judge **Richter**. Well, again, I don't remember the precise context of Judge Gignoux' ruling on that point, and I don't know how specific any information Dredge might have had—certainly, had there been specific allegations involving a specific judge, I'm sure I would have been aware of that, and I'm not aware of anything like that.

Mr. **Anderson**. Well, Agent Murphy was the case agent throughout the trial, was he not?

Judge **Richter**. Yes, he was.

Mr. **Anderson**. And he also—although he may have been for portions of the testimony outside, he was present during motion arguments, was he not, aiding you?

Judge **Richter**. Sometimes.

Mr. **Anderson**. And he was, in effect, the principal assistant during trial. You and Mr. Weingarten reported developments and discussed things with him every day of the trial, did you not?

Judge **Richter**. That's fair.

Mr. **Anderson**. And Agent Murphy—well, let me not speculate about that. Let me put it back in the hypothetical. I now give you a hypothetical and ask you to just tell me what the duty of a responsible prosecutor was.

If a defendant judge wished to introduce evidence in support of a rainmaking defense, if the government objected to that and if the presiding judge said you shall not be able to introduce this evidence unless you can prove that the alleged attorney co-conspirator has made claims with respect to one other Federal judge, and if the prosecutors at that trial had information showing that that alleged co-conspirator had made such claims, am I correct in understanding your view as a responsible prosecutor, you had a constitutional duty to disclose that fact immediately?

Judge **Richter**. I think it would depend on the nature of the evidence that we had. I mean, if there was simply a statement that Borders has said he could—had connections with other judges, then I don't really see where that——

Mr. **Anderson**. What if he had specified a particular federal judge?

Judge **Richter**. If he had done it in a specific fashion and talked about a specific thing and that was the nature of Judge Gignoux' ruling, then possibly yes.

Mr. **Anderson**. Possibly? Is there any doubt? Isn't that exculpatory evidence?

Judge **Richter**. It depends on the context. I don't think it necessarily would be, Mr. Anderson. We were trying this case. The fact that——

Mr. **Anderson**. What if the FBI had an open investigation into claims that Mr. Borders had made a specific attempt to represent that he could influence the conduct of another specific judge and they knew that—and you knew that at the time? Would you still—would our hypothetical prosecutor still be entitled to not make the disclosure of this information?

Judge **Richter**. Well, we're dealing in hypotheticals and it's not a simple issue as to what the prosecutor's obligation is. It was certainly our position at trial involving some of the things that you were talking about that Judge Hastings was trying to call that we were trying this case, and the fact that other people at other times had done rainmaking schemes had nothing to do with what was going on here, and that we were trying to prove what was going on here.

And if Mr. Borders—we weren't putting on—well, if Mr. Borders had told Mr. Dredge, which is apparently what you're saying exists, that he had influence with other judges, I don't really see where that would be probative evidence.

Mr. **Anderson**. Well, let me—I mean——

The **Chairman**. Mr. Anderson, we've been very patient in this line of questioning. This is not an appeal from the decision there. In fact, I believe Judge Hastings won that case. I do think that you've asked and had the question answered two or three times here.

If you have additional questions that are new material, we'll permit those, but I think there's a limit to how many times we're going to go over this.

Mr. **Anderson**. I don't think the witness is giving me the unqualified one, and I think this does bear on the credibility issue of this trial.

The **Chairman**. Credibility of what?

Mr. **Anderson**. Credibility of whether there has been a manipulation of the prior evidence that Senators ought to think about when they're considering whether it's fair to redo it now eight years after the fact.

And I understand that Mr. Richter is not on trial. I'm not questioning that, but if there was information that might have enhanced this defendant's defense that should have been made available to him in 1983, it is clear, I take it, from the record that the evidence available to the defense has otherwise been steadily diminishing over the past five years.

The fact that there was more evidence that might have helped him available—Mr. Nesline is now incompetent.

The **Chairman**. I think the real issue, of course, is the guilt or innocence of Judge Hastings as to the Articles of impeachment before this committee, and I really think we're getting a little far afield when we go into questions of judgment and action by counsel, by prosecutors, in a case that Judge Hastings prevailed in.

We've permitted this line of questioning, and I'm just saying that we've gone over it, and over it and over it, and I think there comes a point where I'm going to ask that you go into another matter.

Mr. **Anderson**. Mr. Chairman, I mean, again, I understand what you're saying, but I think this is fairly crucial that it be available to the Senate. You have tended to err on the side of——

The **Chairman**. Why don't you ask what final question you have, if it's different than the ones you've been asking? And then——

Mr. **Anderson**. Well, I'm just trying to pin the witness down on the point. I mean——

The **Chairman**. Well, I think you've asked the question several times. He has answered it several times. If you want to ask it once more, go ahead, but sooner or later we have to move on.

Mr. **Anderson**. Well, let me move on, and perhaps I may return to it.

On the reciprocal discovery production question, there were a couple of items that the government did not give Judge Hastings that it had acquired fairly early in the process, weren't there, Judge Richter?

Judge **Richter**. Not that I recall. If there are such things——

Mr. **Anderson**. Well, let me help you recall. The government did require—I don't know that it ever got the tape because I've never gotten it, but it did get some transcripts of a recorded telephone conversation between Judge Hastings and Hemphill Pride, did it not?

Judge **Richter**. We had a tape. I don't think I ever saw a transcript of that. That must have been created——

Mr. **Anderson**. Well, you also got a tape of a recording between Hemphill Pride and Bill Borders, did you not?

Judge **Richter**. Not that I'm aware.

Mr. **Anderson**. Well, I take it if the FBI had obtained those, they would have brought them to your attention, wouldn't they—your experience?

Judge **Richter**. I can't answer that, Mr. Anderson. I don't know.

Mr. **Anderson**. And Hemphill Pride was a significant witness at the trial in 1983, was he not?

Judge **Richter**. That's correct.

Mr. ANDERSON. And, again, my understanding is that under discovery production you are to turn over to an accused, at least depending on the judge, either at the beginning of or a few days before trial prior statements made by witnesses, are you not?

Judge RICHTER. That is germane to the facts being tried.

Mr. ANDERSON. And do you know whether either the tape or a transcript of the conversation between Hemphill Pride and Judge Hastings was turned over?

Judge RICHTER. We did not, in our opinion, feel that it was discoverable, that it was either exculpatory type information or that it was Jenks information. We felt that it might be embarrassing to Mr. Pride that he had tape recorded this information, so we didn't want to turn it over.

What we did was give it under seal to Judge Gignoux, with a brief explanation of its source, and left it up to him, if he felt there was a legal obligation to turn it over. We certainly felt it had nothing on it that bore with the issues that were being tried in the case.

Mr. ANDERSON. And why did you feel that it might be embarrassing to Mr. Pride?

Judge RICHTER. He had tape recorded a conversation with his friend.

Mr. ANDERSON. And wasn't really the credibility of Mr. Pride's proclamations of his friendship a part of the government's case?

Judge RICHTER. I'm not sure that his proclamations of friendship——

Mr. ANDERSON. Well, did the government not present Mr. Pride as a witness——

Judge RICHTER. Yes.

Mr. ANDERSON [continuing]. Who should be believed because he was a friend of this judge, and therefore would never do anything unless he was forced to by his oath that was adverse to the relationship? I mean, that's the way you presented Mr. Pride at trial, wasn't it?

Judge RICHTER. I think that's fair.

Mr. ANDERSON. And the knowledge that he, without telling the fact to the judge, tape recorded a message might have undermined that impression upon the jury, might it not?

Judge RICHTER. We did not believe that it rose to that level. We left the decision to Judge Gignoux.

Mr. ANDERSON. Well, let me then ask you about one more thing. We've had some evidence from a comptroller of the L'Enfant Plaza Hotel regarding HOBIS information slips. I gather that the L'Enfant Plaza Hotel records were gathered during the grand jury phase of the investigation, were they not?

Judge RICHTER. I don't know.

Mr. ANDERSON. Well, after the indictment was filed, you no longer had the subpoena power of the grand jury to gather evidence. Is my understanding of that correct?

Judge RICHTER. Other than for trial, that's correct.

Mr. ANDERSON. And do you recall whether the government in its discovery turned those records over to Judge Hastings?

Judge RICHTER. I don't know. I have no recollection of specific items like that, Mr. Anderson. It's been many years.

The **Chairman**. Counsel, we're at 5:30, which is the time we had scheduled to recess. Before we recess—and we will recess until 9:00 tomorrow morning—before we do so, could I ask both counsel for the House and counsel for respondent to represent to the committee how much additional time you expect in this case?

Could the House managers indicate in their presentation of their direct case or their case in chief, how many additional witnesses or how much time they would expect to need?

Mr. **Bryant**. Mr. Chairman, on the bribery case and the attendant perjury allegations in the Articles, we have only two additional, very short witnesses. I would need to consult a moment before estimating the amount of time we need on the remainder of the case.

The **Chairman**. Would you consult with your co-counsel there?

Mr. **Bryant**. Yes.

The **Chairman**. Mr. Anderson, do you anticipate substantial additional cross-examination of this witness or either of those other two that they have indicated they might call as part of the allegations regarding bribery?

Mr. **Anderson**. Perhaps a half an hour more with this. If I could just look and see who they are calling, I can give you that estimate.

The **Chairman**. I wish you would do that, please.

Mr. **Bryant**. Mr. Chairman, we would estimate—I'm sorry; I may have interrupted something.

The **Chairman**. No. Go right ahead.

Mr. **Bryant**. We would estimate about 45 minutes longer with regard to the bribery case and the associated Articles, and approximately six hours of direct evidence with regard to the Title III wiretap Articles.

The **Chairman**. How much cross-examination would counsel for respondent expect with regard to the Title III issue?

Mr. **Anderson**. I think that will be fairly substantial and may—I don't know whether I'll use it, but they are fairly complex cross-examinations on one or two of them. It may be as much as four hours, I think.

The **Chairman**. Well, with that expectation, we should be able to finish this case Friday—I mean the presentation of the case in chief by Friday morning, some time by Friday noon, and we will expect to do so.

We have to consult with members of the committee, and we'll try to do that early tomorrow, to determine what our schedule will be on Friday for sure, but we will plan to go again tomorrow morning at 9:00 and keep the regular schedule tomorrow.

Mr. Anderson?

Mr. **Anderson**. Mr. Chairman, if I could just remind the committee when it deliberates on that, if we could accommodate Margaret Dabreau Owens, who is the woman who was also at the hotel on September 12th, some time Friday before she leaves the country, it would be——

The **Chairman**. My understanding from your submission to the committee is that you wanted to do that with a videotape deposition.

Mr. **Anderson**. I would like to accommodate her interests. If we had time Friday afternoon—I don't think either one of us would expect her to be a long witness—that would be fine. The second best would be with a videotaped deposition if it, in fact, turned out we couldn't get to it on Friday.

The **Chairman**. We would have no objection to the videotape deposition, but we'll see on Friday how we proceed.

Mr. **Bryant**. Mr. Chairman, there is one other item. We asked yesterday that the committee direct respondent to provide us with a list of his witnesses in the order in which he plans that they appear, and a list of the documents they intend to use at trial.

We have received a proposed list about which we'll have further comment tomorrow, but we have not yet received the documents.

The **Chairman**. When does counsel for respondent intend to provide a list of documents that he would expect to offer into evidence?

Mr. **Anderson**. Within ten minutes after the time I have such a list. I'm not holding anything back. I will keep working on it over the weekend. My last night, between preparing for today and getting to you the list of witnesses—I hope to have some time to devote to that over the weekend.

I will represent to the House that I'm not aware at the present time of any documents, and certainly not very many, that are not in what they've given me. We haven't gone out and gotten some documents that we intend to spring on anyone.

Mr. **Bryant**. Mr. Chairman, based on the questions asked of us about the timing, the Chairman accurately observed that we may finish our direct case here Friday. We're going to be faced with a situation of him starting his case without us having been given what the committee ordered him to give.

The **Chairman**. Clearly, we would expect—we have expected to have that list of documents for some time now and we would certainly require it before we permit the beginning of respondent's case. I think that's not an unreasonable position.

Mr. **Anderson**. Mr. Chairman, I certainly would try and comply, but I thought the thrust of your ruling was that by not pre-filing them, the House had obviously reserved the right to object on authenticity and other grounds. I'm not holding it back.

The **Chairman**. I understand.

Mr. **Anderson**. We are going to proceed as best we can. There are only 24 hours in the day.

The **Chairman**. We understand the limitations.

We will recess until 9:00 tomorrow morning.

[Whereupon, at 5:35 p.m., the committee was adjourned, to reconvene at 9:00 a.m., Thursday, July 20, 1989.]

IMPEACHMENT OF JUDGE ALCEE L. HASTINGS

THURSDAY, JULY 20, 1989

U.S. Senate,
Impeachment Trial Committee,
Washington, DC.

The committee met, pursuant to notice, at 9:22 a.m., in Room SH-216, Hart Senate Office Building, Hon. Jeff Bingaman, chairman of the committee, presiding.

Present: Senators Bingaman, Specter, Leahy, Durenberger, Pryor, Rudman, Bryan, Bond, Kerrey, Gorton, Lieberman, and Burns.

House Managers Present: Representatives Bryant, Synar, Gekas, and Fish.

Counsel Present: Terence J. Anderson, counsel for Judge Hastings; Patricia Graham Williams, counsel for Judge Hastings; Robert S. Catz, counsel for Judge Hastings; Lewis Myers, Jr., counsel for Judge Hastings; Alan I. Baron, special counsel, House Impeachment Committee; Janice E. Cooper, Patricia Wynn, and Lori E. Fields, assistant special counsel, House Impeachment Committee; Michael Davidson, Senate Legal Counsel; Elaine Stone, counsel, Senate Impeachment Trial Committee; Mark Klugheit, counsel, Senate Impeachment Trial Committee; and Bruce McBarnette, counsel, Senate Impeachment Trial Committee.

Staff Present: Anthony Harvey, administrator, Senate Impeachment Trial Committee; P. Casey McGannon, staff assistant, Senate Impeachment Trial Committee; and Isabel McVeigh, staff assistant, Senate Impeachment Trial Committee.

The **Chairman**. We have been informed there is a vote at 9:30, and we are also fairly certain we will not have a quorum until people go ahead and do that vote. So we will plan to recess until about 9:45 when we will hope to have a quorum.

Before we do recess, let me just ask counsel for respondent what your intentions are as to the additional cross-examination of this witness, how much additional cross-examination, and also—well, first just how much?

Mr. **Anderson**. Mr. Chairman, depending on how we get along, I estimate a half an hour or less.

The **Chairman**. All right. I think I indicated yesterday the concern that I had—and I have talked to Senator Specter and others on the committee, and they have a similar concern—about the direction of that testimony and the extent of it, or the direction of the questioning and the extent of it. What is to be the purpose of the remainder of your cross-examination?

Judge **Hastings**. Could the witness be excused, Mr. Chairman?

The **Chairman**. Certainly.

Mr. **Anderson**. Mr. Chairman, let me do address that because I know—I have felt the concerns that you share, and let me talk a bit about why I think it is relevant.

I understand that Judge Hastings was acquitted in 1983. I think it is relevant, if there is a search for truth, to decide whether it is now possible to find the truth and whether that can be fairly assessed. I think I need with this witness to establish the context in which certain events, clearly the question of discovery product, is relevant. It has been made relevant within the Managers' argument. Does the fact that these draft letters were produced later in the process rather than earlier bear upon the question of whether they were fabricated and bear upon the question of whether Judge Hastings testified truthfully? That will be one line.

The **Chairman**. So you are intending to proceed with additional questions on that?

Mr. **Anderson**. Yes, to probe that and Mr. Richter and eventually Mr. Weingarten.

The **Chairman**. I think that is entirely appropriate to go into that issue.

Mr. **Anderson**. There is a more fundamental question, and since we have a moment, simply so you are aware when you rule on this and other issues, you have at least some context of where I am coming from. Let me give you three illustrations that spring to my mind.

We do know that there was almost an hour when Borders was confronted that could have been captured on videotape. We could have seen his face, his reaction, whether he made any remarks about Judge Hastings. That is gone. We know that the original interview with Alcee Hastings could have been recorded. We could have had the rough notes. Those are gone. We know there was a time when the audit test on the L'Enfant Plaza records and C&P's records could have been done. That is gone. We know there was a time when Mr. Dredge could have been confronted at a time when his memory and the rest of it could have been tested prior to the time that all of the documents had been assembled and he had had an opportunity to reconstruct.

It really is relevant here to the question, and I would hope—the Chair has bent over backwards, and I understand that we are embarked on untried grounds without rules. You have allocated 38 hours, or whatever the time is, to each side. I think each side is proceeding ahead of schedule and trying very hard to meet that. You have indicated with respect to the House that the relevance is not—the Senate and several of your colleagues have indicated they think that anything that might potentially bear on this should come on without regards to established trial procedures or rules.

This is respondent's trial. I do speak for respondent, except when he speaks for himself. I would ask you within the limits of the time you have allowed us to be as liberal with us as you have been with the House. I recognize that we may try your patience, but we are here until, I take it, August 4th. If you think I am—I do not mean to abuse any of you. I recognize that in many measures I will dependent upon—Judge Hastings will—the views you will express when the Senate retires to closed session. But I do think—for example, I do not think the question of whether the FBI should have recorded this is just a question for legislative oversight. I think it is a question that the Senate is going to have to confront about can it discover the truth in 1989, fairly. And in that context, I think it does bear on the question.

Judge Richter may not agree with me, but I think trial law is in many respects a contact sport. There are elbows that go back and forth on both sides. There is jockeying for position. It is happening here, and within limits, that is what lawyers expect.

If that was a fair trial, whatever failures to disclose disclosures, adequate investigations, cut fairly both ways. And if it now turns out that five years after the fact the records that might have been produced had defendant, respondent, been confronted then have disappeared, or witnesses gone and this has been reconstructed, I think the Senators who may decide to vote present and conclude we cannot fairly claim. I would ask the opportunity to develop that record.

The **Chairman**. Counsel, let me just give you my view, and then I would like Senator Specter to give his, and then we will go ahead with our recess.

I have been trying to be very liberal in permitting testimony and examination by both House counsel and by yourself on a wide variety of things. It is my sense that belaboring the issue of what the Government did or should have done differently in the trial at which Judge Hastings was acquitted does not particularly strengthen your case. And I think that the relevance begins to be very tenuous, the question of how relevant it is. Obviously, we are trying to give adequate time to both sides, but I think the time may be better spent pursuing some issues more central to the case.

I understand that having lived through earlier trials, counsel gets very interested in them and very concerned about the way they were conducted. But the issues before the Senate today, before this committee, I think are different, the primary issues before us. And I really do think we tried to deal with this to a degree in the order we issued on the motion in limine. We left a great deal for later determination by us. We did not cut off testimony yesterday or questions along these lines. But I express my concern about how long and belated—not belated but how long and laborious this line of questioning was becoming.

Let Senator Specter express his point of view on it, and then we will recess.

The **Vice Chairman**. Well, thank you, Mr. Chairman. I have a couple of thoughts on the matter.

My view is that the relevance is tenuous, but perhaps so, and I think you ought to be allowed latitude, as I think the committee has and the chairman has. But then the issue comes up about the extent of it, whether it is unduly belabored. And I know that is a judgment call that lawyers have to make, but it seems to this lawyer that it has been.

When you talk about August 4th, you say we have to be here until August 4th. That is not necessarily so. We all have a lot of other things to do between now and August the 4th, and we should conduct this proceeding properly, but we do not have to fill all the time between now and August 4th.

Also, it is becoming increasingly more difficult to get a quorum. You have observed that, obviously. Some of us are here immaculately, promptly at 9:00 o'clock, and the parties have been. But it is a harder thing to do. And I do not take my solace from the fact that we are a few hours ahead of schedule because things can happen in the middle of a proceeding, and we have not heard some of the most important testimony yet, which may cause very substantial delays.

You have represented that Judge Hastings is going to testify, and that is going to take some time. It is the very centerpiece of the proceeding.

On the issue of oversight, I am concerned, I will say for the record, about some of the things that I have heard about the way this matter was conducted. And I understand your theory about the lack of speedy trial. I know the cases on that subject which can lead to acquittal in a criminal proceeding. But I think that those points have been pretty well made about what was not done and how much time has passed. So I would join with the chairman in urging that you focus it a little more directly because we have got a lot of work to do yet.

Mr. ANDERSON. May I respond? I will just leave you with a thought as you go off, and I will consider your remarks.

I understand. I have no desire to stay to August 4th if we can do the job before, and I do not mean to impose upon the time. My concern—and I just leave you with this thought—is that there is a dual theory in the House's presentation that I hear, at least I sense—themes, perhaps. When we are talking about standards of proof and when we are talking about things like Article XVI, we appear to be looking at, holistically, is this a fit man to be a judge. And some of your colleagues' questions probing into matters that the House chose not to include in its Articles and other things suggests that that may be an underlying concern for some Senators.

I think that generally the sense of the committee has been, well, yes, all of that is relevant, anything can come in. I would ask when you consider relevance that you not specifically—just either way. Either we confine these proceedings to 16 specific offenses and say the only issue is guilt or innocence. But if we are going to go beyond those offenses in our inquiries, I think that some latitude—and I will certainly try not to abuse the privilege. I do not like long cross-examinations. If I can get to the point and get out, I will do it. There are going to be some witnesses who are more difficult for me to handle than others, and I would just ask you to bear that in mind.

I appreciate this time this morning, Mr. Chairman, Mr. Vice Chairman.

The CHAIRMAN. All right.

The VICE CHAIRMAN. We are very sympathetic to lawyers' plights, Mr. Anderson.

The CHAIRMAN. We will go ahead and recess until quarter of 10:00.

[Recess.]

The CHAIRMAN. The committee will reconvene.

By way of explanation, let me say that there are several major markups going on in the Senate at this time, and unfortunately quite a few of our committee members have had to be present at those.

At this point, let me just make one announcement. The committee has served a subpoena on William Borders, Jr. He is to appear here on Monday, July 24, 1989, at 9:30 a.m., at which time we will question him, and counsel should be prepared to as well if he is willing to answer questions at that time.

Mr. Anderson, would you continue with your cross-examination, please?

Mr. ANDERSON. Yes, Mr. Chairman.

The CHAIRMAN. Judge, we apologize to you for our delay in beginning today. We know you have matters that are also being delayed because of it.

Judge RICHTER. I will pass the apologies on to the many who are waiting.

Mr. ANDERSON. Judge Richter, let me close off a line and try and move quickly with you this morning.

May I approach the witness, Mr. Chairman?

The CHAIRMAN. Please, go ahead.

Mr. ANDERSON. I show you what has been marked Respondent's Exhibit No. 6 for identification and ask if you can identify that.

TESTIMONY OF JUDGE ROBERT I. RICHTER (Continued)

CROSS EXAMINATION (CONTINUED)

Judge RICHTER. It appears to be a pleading filed by Mr. Weingarten and myself in January of 1983 in the case of *United States* v. *Alcee Hastings*.

Mr. ANDERSON. And that would have been a motion filed during the course of trial, would it not?

Judge RICHTER. Yes.

Mr. ANDERSON. If I can direct your attention to Page 6 at the bottom and the top of 7, it is by that motion that you sought to restrict Judge Hastings' attempt to prove that what Mr. Borders had been doing was a rainmaking—or restrict the evidence he might offer to prove that Mr. Borders was involved in a rainmaking scam; am I correct about that?

Judge RICHTER. It appears so, yes.

Mr. ANDERSON. And in that motion, the Government did concede that it is conceivable that other criminal activity of Borders sufficiently similar in nature and contemporaneous in time to the crimes in this case could be relevant to the issue now being litigated? I am looking now at the——

Judge RICHTER. I have not seen this pleading in over six years, Mr. Anderson. It says what it says.

Mr. ANDERSON. Would you look at the top of page 7?

Judge RICHTER. OK.

Mr. ANDERSON. The Government in that case was acknowledging that if Judge Hastings could show that Mr. Borders had engaged in similar and contemporaneous schemes, that might be admissible under Rule 405(b) to show part of a plan, pattern, or intent to pull a scam on Judge Hastings; is that a fair summary of that paragraph?

Judge RICHTER. It is somewhat more qualified, but yes.

Mr. **Anderson**. Now, at the time you signed that, were you aware that Mr. Murphy had reported that Mr. Dredge—and I am quoting now from Respondent's Exhibit No. 10—"had advised Agent Murphy that Borders is doing similar deals involving an unknown appellate court judge in New Orleans"?

Judge **Richter**. I have no recollection, Mr. Anderson.

Let me say that it has been six-and-a-half years since I put these files away. It has been six years since we turned them over to Mr. Doar. I have had neither the need nor the inclination to review them at any point. I feel kind of like a retired prizefighter who shows up to be introduced before a fight and, when I get to the ring, I am told, "Put the gloves on." I was in no way prepared or told that I would need to respond to these legal issues, and I have no recollection at this point. I can sit here and read these things and study them, but I am not in a position to do legal debate with you as I would have been six years ago.

Mr. **Anderson**. As we did six years ago.

Judge **Richter**. That is correct.

Mr. **Anderson**. It has also been six-and-a-half years for Judge Hastings, and we understand——

Judge **Richter**. Well, Mr. Anderson, you have lived with this for six-and-a-half years. I, as I said, have not looked at it, and I am not in a position as a good lawyer, which I believe I am, to have legal arguments with you at this point. If the chair insists, I will do my best. But I am not prepared to argue——

Mr. **Anderson**. I do not want to have legal arguments with you, Mr. Richter. You were the assistant chief for operations of the Public Integrity Section, were you not?

Judge **Richter**. That does not give me the ability to remember things six years later, Mr. Anderson.

Mr. **Anderson**. I understand, but it does give you the ability to have signed a document, and you do know what your responsibilities are both as a supervisory attorney and co-counsel on those documents. I simply want to get the document into evidence. It is your signature. And I agree with you, the representations made there were made.

That is your document, you signed that in your capacity as an attorney for the United States Government, did you not?

Judge **Richter**. Yes, sir.

Mr. **Anderson**. And you are telling me now you have no present recollection six-and-a-half years after the fact that Agent Murphy reported that Mr. Dredge had told him that Borders was doing similar deals?

Judge **Richter**. I have no present recollection. If I did, it is in no way, shape, or form inconsistent with the representations made in this pleading.

Mr. **Anderson**. Do you recall that during the course of the trial a witness named Norma Stallworth was called to testify concerning a similar scam, or what Judge Hastings believed to be a similar scam that Mr. Borders had pulled on Judge Barrington Parker?

Judge **Richter**. I do.

Mr. **Anderson**. And do you recall at that time that the Government objected strenuously to her testimony being called forward?

Judge **Richter**. I do.

Mr. **Anderson**. Do you recall the court sustained your objection? And I am quoting now from page 1731 of the trial transcript: "The court understands this witness can give no testimony that Mr. Borders was, in fact, guilty of that scam." I do not ask you to recall that. I simply ask you to accept it.

Judge **Richter**. I certainly remember that that was the truth, that there was no evidence he was guilty of that scam. But I have no specific recollection. It was certainly my belief at that point that there was no such proof.

Mr. **Anderson**. Let me then turn to a different matter, and, again, I share with you some concern about recollection.

At the outset of the case, a number of lawyers appeared on behalf of Judge Hastings, do you recall that?

Judge **Richter**. Yes, I do.

Mr. **Anderson**. Do you recall that Mr. Mavridès and Mr. Hirschhorn were among those who appeared?

Judge **Richter**. Yes.

Mr. **Anderson**. Do you recall that there were considerable tensions from the outset between Mr. Mavrides and Mr. Hirschhorn concerning who was in charge here and what their respective roles were?

Judge **Richter**. I remember we were always somewhat puzzled as to the nature of the defense operation. As to tensions between the two of them, I have no knowledge.

Mr. **Anderson**. Well, do you recall that Mr. Mavrides filed independently a motion for severance, and Mr. Hirschhorn immediately responded by filing an amended motion for severance, and the newspapers reported that there was tension between the two men?

Judge **Richter**. I thought it was the newspapers in Miami. I was not in Miami. I did not follow the press reports.

Mr. **Anderson**. Were you present on February 17th when Judge Gignoux was hearing pretrial motions and both those lawyers were present?

Judge **Richter**. I am sure I was, and I do remember that there was a series of pleadings filed that caused us to wonder what was going on.

Mr. **Anderson**. I realize it is unfair to ask you if you recall, but there are some things which I would like to get through the record, and I can show you the transcript. But let me frame it as a "do you recall."

Do you recall that the court even then indicated that there was indication in the press, speaking to Mr. Mavrides, that you and Mr. Hirschhorn are approaching Judge Hastings' representation from different directions?

The **Chairman**. Counsel, I am having great difficulty understanding the relevance of this line of questioning.

Mr. **Anderson**. Well, let me help you very quickly. There have been specific proffers which you will recall were debated in the stipulations which are now in regarding whether the fact that Mr. Hirschhorn was in the case and then withdraw prior to the production of the letters is any evidence that should be considered by any Senator as bearing upon the question of whether the delay in production supports the claim that Judge Hastings may have fabricated the letters. I cannot read those stipulations, and you will recall that I had some problems when the House proposed them because I thought they were trying to lay a patent on this case as though somehow Mr. Hirschhorn withdrew because Judge Hastings was up to something improper.

It is quite clear in the pretrial proceedings that there were considerable tensions between counsel. Mr. Mavrides was an experienced trial practitioner, I will proffer, not an inexperienced one. He emerged as lead counsel because Mr. Hirschhorn's ego was such that there could not be two chefs at the same party.

Mr. BRYANT. Mr. Chairman, we would object to his testifying.

Mr. ANDERSON. I have been invited to give a proffer on relevance.

Mr. BRYANT. His offer of proof is what he is making to this committee at this time.

The CHAIRMAN. I appreciate the proffer of proof. I do not see that this witness is ideally suited to testify as to this arrangement. If Judge Hastings wishes to when he is put on the stand, I think that would be totally proper. He would know much more about the arrangements between his lawyers than this witness.

Mr. ANDERSON. The problem is I have to corroborate this somehow independently of Judge Hastings since I take it his credibility will be at issue. Mr. Mavrides is dead.

The CHAIRMAN. I just have great difficulty seeing how this witness can corroborate it. If he can, certainly he can respond to your questions.

Mr. ANDERSON. I will be happy to cut down on this line of questions if simply I may at some point proffer a part of trial transcripts that Representative Bryant——

The CHAIRMAN. We will be pleased to have a proffer of that trial transcript. I do not see that that would be objectionable to anybody at this stage.

Mr. ANDERSON. At this time, Mr. Chairman, since it has been authenticated, could I simply mechanically move Respondent's Exhibit 49 into evidence?

The CHAIRMAN. Is there objection to that exhibit being admitted?

Mr. BRYANT. No objection.

The CHAIRMAN. It will be admitted.

[The document referred to was marked Respondent's Exhibit No. 49 and was received in evidence.]

Mr. ANDERSON. I will not go to the transcript, but let me just probe your recollection if I might, Judge. I realize it is difficult.

The docket I think refreshed your recollection that the first status conference after the case came back from appeal was on November 4th. Do you recall whether there was a debate at that meeting with Judge Gignoux over defendant's discovery production?

Judge RICHTER. I have no recollection at this point.

Mr. ANDERSON. Do you recall whether Mr. Mavrides, and I think primarily Mr. Weingarten, but perhaps you were in that part—Mr. Mavrides was seeking any leverage he could get to get the Government to produce Mr. Dredge?

Judge RICHTER. I have no recollection on that point. The record would speak for itself, Mr. Anderson.

Mr. ANDERSON. I really am trying because there are parts of this that are not in the transcript, so I am just asking you what you do recall. Do you recall that there came a date when Judge Gignoux said the defendant shall produce by December 1st copies of all documents he intends to introduce in evidence?

Mr. SYNAR. Mr. Chairman, it is clear that the witness does not recall, and, again, we are going to object. The same question seems to be asked two or three times.

Mr. ANDERSON. I do not think that I am asking—I think I am moving through critical months. The documents were produced on December 1st. Delay in production has been introduced by the House as something supporting it. I understand the difficulties of recollection. I think that is one of the facts of consequence in this case.

The CHAIRMAN. The objection will be overruled if counsel can move quickly through this. It does seem that the witness does not recall a lot of the detail he is being asked about.

Judge RICHTER. I do not remember a specific date, Mr. Anderson, that final production was ordered. I am sure such an order was issued.

Mr. ANDERSON. After that order was issued, counsel for Judge Hastings complied, did they not? You do not recall any departure from the judge's order to produce the documents on a specific date?

Judge RICHTER. I know we got some further discovery; whether it met a deadline or did not meet a deadline, I have absolutely no recollection.

Mr. ANDERSON. If I could, I would ask the clerk to place on the dais two documents you identified yesterday. Those were introduced as trial exhibits, were they not?

Judge RICHTER. Well, as I said, I have no photo memory of the specific toll records. But since it is marked with an exhibit number, I assume that these are the records that were introduced.

The CHAIRMAN. Are these marked as exhibits?

Mr. ANDERSON. Yes.

The CHAIRMAN. What numbers are they?

Mr. ANDERSON. They are 210 and 211, the telephone records for Ms. Williams and for Judge Hastings.

Throughout the trial, you and Mr. Weingarten had Agent Murphy available as a case agent to conduct such additional investigations as arose during the course of the trial, did you not?

Judge RICHTER. That is correct.

Mr. ANDERSON. And if you recall, do you recall that Jesse McCrary testified concerning an evening at the Sheraton where the issue was whether or not they expected Mr. Borders or were surprised by Mr. Borders? Do you recall that as an aspect of the case?

Judge RICHTER. I do.

Mr. ANDERSON. And do you recall that I believe during the course of his testimony, Mr. McCrary identified three other persons who had been at that meeting? You may not recall their names, but I think it was then Donna Owens, now Merrill, and the Dabreau sisters?

Judge RICHTER. I remember.

Mr. ANDERSON. And do you recall that Agent Murphy was dispatched to conduct telephone interviews of those persons?

Judge **Richter**. I certainly remember that we made efforts to obtain their presence.

Mr. **Anderson**. And let me ask you, if you can, based on your experience: If Agent Murphy had reached those people and interviewed them and reported back to you and if the Government did not call them, would it be fair to infer now that you did not think their testimony could add to the Government's case?

Judge **Richter**. I cannot answer that. There would have to be some content to it, Mr. Anderson, as to what I was told. We would not rely on Agent Murphy's description of the relevancy. We would have made the determination. You would have to ask Agent Murphy specifically what he told us. I do not remember. I do remember that I believe we could not find one of them, and one of them was not being cooperative. This was somewhat an overnight-type of a proposition, that we learned these names and learned about them, and we had absolutely no opportunity other than a day, at most, to try to develop them as witnesses. As to what the result of Agent Murphy's investigation was with them, you would have to ask him.

I am sure, since—well, you have said he has lived with it for a long time. He would remember.

Mr. **Anderson**. Let me again press you just slightly as a prosecutor. If Agent Murphy had contacted them and if he reported back to you upon the results of that, you would have called them as witnesses if you thought there was any reason to require their production in Miami for trial, would you not, based upon the information?

Judge **Richter**. If we could have obtained their presence. If I remember, they were from Trinidad, and we had a very short time frame. Obviously, if they would have been remotely helpful to us and were available, we would have called them, Mr. Anderson.

Mr. **Anderson**. Thank you.

Now, when Judge Hastings testified—he testified as the last witness in his case, did he not?

Judge **Richter**. I do not remember if he was the last witness. He certainly was a climactic witness.

Mr. **Anderson**. And he was on the stand for the better part of two days; am I correct?

Judge **Richter**. I believe so.

Mr. **Anderson**. And when he testified to his recollection of the events of October 9, 1981, you were able overnight to produce Albert Blocker from the L'Enfant Plaza Hotel as a rebuttal witness, were you not? Do you recall that?

Judge **Richter**. I know we produced him. Whether it was a rebuttal witness or not, I do not remember that. He probably was.

Mr. **Anderson**. And, if you recall, do you recall that at the time Mr. Blocker came into the courtroom, you provided Judge Hastings and his counsel with a set of what have been called HOBIC or HOBIS printout slips for long-distance calls? Does that ring a bell?

Judge **Richter**. I do not recall that act. If you say it happened, it could well have happened.

Mr. **Anderson**. Do you recall whether you gave Judge Hastings those records at any time prior to the time that Mr. Blocker came into the courtroom?

Judge **Richter**. Let me say, I have no specific recollection of it. If you asked me to guess now what happened, I believe we did not have the records prior to trial. They were subpoenaed for trial. We did not expect that to be a relevant point of inquiry until after Judge Hastings testified. So my best recollection is—and, again, other people would know better, I suspect—we did not have them to produce.

Mr. **Anderson**. Let me again frame a hypothetical. As a trial counsel, you have these documents in your possession. In the midst of trial or in the midst of the defendant's, it becomes clear these documents may become relevant for you on rebuttal. Would it be your practice to give the documents immediately to counsel for the defense or to give them to them at the time your rebuttal witness was present?

Judge **Richter**. Mr. Anderson, if a defendant was on the stand and we in the course of his testimony became aware of evidence that showed he was perjuring himself, we would not turn it over until the testimony was complete, I am certain. And I am not aware of any requirement that would make you do so.

Mr. **Anderson**. I am just asking you your practice.

Judge **Richter**. Well, I do not have a practice. I dealt with each situation as it arises when I was in practice.

Mr. **Anderson**. Again, I admit it was a long time ago. Do you remember that Hemphill Pride was a fairly significant witness at that trial?

Judge **Richter**. That is correct.

Mr. **Anderson**. And he was examined fairly thoroughly by the Government and by counsel for Judge Hastings, do you recall?

Judge **Richter**. That is correct.

Mr. **Anderson**. Do you recall his testimony that he had been in telephone contact with Judge Hastings and Mr. Borders, that he acknowledged he had been in telephone contact with them over the summer of 1981?

Judge **Richter**. I have no specific recollection. If it is in the record, that would have been the kind of evidence that might have been there.

Mr. **Anderson**. Do you recall that the dispute was not over the fact of contact but over the content, the differing views as to what the content of these communications may have been? And I am just trying to refresh your recollection there, Judge.

Judge **Richter**. That is entirely possible.

Mr. **Anderson**. Now, the telephone records that you are looking at, I gather you do not recall, but those ordinarily are the kinds of records as a prosecutor that you would have gathered during the grand jury phase, are they not, in a case that involved potential telephone contacts with Mr. Borders and other people?

Judge **Richter**. Possibly.

Mr. **Anderson**. And you did have Agent Murphy available at the time Judge Hastings was testifying concerning those records also?

Judge **Richter**. That is correct.

Mr. **Anderson**. Four more questions, Mr. Weingarten. And, again, flatter yourself. You were——

Judge **Richter**. Mr. Richter.

Mr. **Anderson**. I am sorry, Judge. You were a supervising and competent trial attorney at the time, were you not? You were a competent prosecutor? Flatter yourself. You would not have made——

Judge **Richter**. I will say yes, although I obviously was not good enough to win this case, Mr. Anderson.

Mr. **Anderson**. Mr. Weingarten was a competent trial counsel?

Judge **Richter**. Very much so.

Mr. **Anderson**. The Department and the FBI provided you both adequate resources to prepare for this case. Is that a fair statement?

Judge **Richter**. Couldn't complain.

Mr. **Anderson**. Judge Gignoux was a competent presiding judge?

Judge **Richter**. Very much so.

Mr. **Anderson**. You and Mr. Weingarten were both satisfied with the jury after it was empaneled?

Judge **Richter**. I guess so.

Mr. **Anderson**. And both of you, prior to the verdict, at least, were satisfied with the performances you had turned in?

Judge **Richter**. I would say so.

Mr. **Anderson**. I have no further questions.

The **Chairman**. Is there redirect examination?

Mr. **Synar**. Yes, Mr. Chairman.

Judge, did you have any information that Mr. Borders was involved in scams as opposed to actual bribery schemes?

REDIRECT EXAMINATION

Judge **Richter**. Well, as I said, we would not have had information of any definitive nature. The most we would have had was the kind of thing Mr. Anderson was asking: That Dredge might have said that Borders said something, which would not really tell us anything.

Mr. **Synar**. So you had no actual information?

Judge **Richter**. No.

Mr. **Synar**. And was it the position of the Government to Respondent's 49 that evidence of previous scams by Borders might conceivably be relevant?

Judge **Richter**. Again, I have to give the same answer I gave Mr. Anderson. It would speak for itself. I do not know.

Mr. **Synar**. Look at page 7.

Judge **Richter**. Mr. Weingarten was the one that prepared this pleading.

Mr. **Synar**. Halfway down, near the bottom of the first paragraph.

Judge **Richter**. What is the question?

Mr. **Synar**. The question is: Was it the Government's position in Respondent's 49 that evidence of previous scams by Borders might conceivably be relevant?

Judge **Richter**. Possibly, yes.

Mr. **Synar**. And is that the same thing as information that Mr. Borders, in fact, has influenced or controlled other judges? In other words, are scams the same things as having influence or control over judges?

Judge **Richter**. No, not at all.

Mr. **Synar**. OK. Thank you.

The **Chairman**. Is there any recross-examination?

Mr. **Anderson**. No, sir.

The **Chairman**. I have no questions of the judge. Does any member of the committee have questions?

[No response.]

The **Chairman**. Is there any reason this witness cannot be excused?

[No response.]

The **Chairman**. Judge, you are excused. We appreciate very much your testifying.

Judge **Richter**. Thank you, Mr. Chairman.

[Witness excused.]

The **Chairman**. Would the House call its next witness, please?

Mr. **Bryant**. The House calls David Attenberger.

The **Chairman**. Would you raise your right hand? Do you, David Attenberger, swear and affirm that the evidence you shall give in the case now pending between the United States and Judge Alcee L. Hastings shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. **Attenberger**. I do.

The **Chairman**. Please be seated.

Mr. **Gekas**. Mr. Chairman, members of the committee.

Please state your name for the record.

TESTIMONY OF DAVID W. ATTENBERGER

DIRECT EXAMINATION

Mr. **Attenberger**. David Wayne Attenberger. The last name is spelled A-t-t-e-n-b-e-r-g-e-r.

Mr. **Gekas**. By whom are you employed?

Mr. **Attenberger**. The Federal Bureau of Investigation.

Mr. **Gekas**. What is your title? What position do you hold there?

Mr. **Attenberger**. I am a supervisory special agent assigned to the FBI laboratory in Washington, DC, as a document examiner in the document section.

Mr. **Gekas**. Please state your educational and professional backgrounds.

Mr. **Attenberger**. I received a bachelor of science degree from West Liberty State College, West Liberty, West Virginia, with a major in chemistry and a minor in mathematics. After being assigned to the FBI laboratory, I underwent a specialized course of training which lasted approximately two years. During this training period, I read numerous books and pamphlets, attended lectures in all aspects of document examinations, and during that time worked under the direction of numerous qualified document examiners.

Mr. **Gekas**. Approximately how many paper documents have you examined?

Mr. **Attenberger**. Hundreds of thousands.

Mr. **Gekas**. How much of your time in the present position that you hold is devoted to document analysis?

Mr. **Attenberger**. One hundred percent.

Mr. **Gekas**. Do you belong to any professional societies?

Mr. **Attenberger**. Yes, I do. I am a member of the Midatlantic Association of Forensic Scientists.

Mr. **Gekas**. Have you given formal presentations of your work?

Mr. **Attenberger**. Yes, I have.

Mr. **Gekas**. Have you testified in court?

The **Chairman**. Let me just try to short-circuit this a little. Is there any question about the qualifications of this witness?

Mr. **Anderson**. No.

The **Chairman**. Perhaps you could go right to the questions that you have for him.

Mr. **Gekas**. All right. We assume that he now qualifies as an expert.

The **Chairman**. We will certainly accept him as a qualified expert.

Mr. **Gekas**. On December 7, 1981, were you employed as an ink and paper analyst in the FBI headquarters, as you have testified?

Mr. **Attenberger**. Yes.

Mr. **Gekas**. Now, I hand you House Exhibit 154, which the clerk has. It is already a part of the record. I ask you to identify it and hold it for further questions. What is that exhibit?

Mr. **Attenberger**. House Managers Exhibit 154 are three legal-size notebook pages with writing appearing on them.

Mr. **Gekas**. What were you required or requested to determine from those documents?

Mr. **Attenberger**. It was requested that I scientifically try to date when the documents were prepared or originated.

Mr. **Gekas**. How did you perform the examination? Please go through that for the committee as succinctly as you can.

Mr. **Attenberger**. There were three areas that I would examine the documents for, or they could be examined for. One was indented writing, writing which appears on pages below a sheet that has been executed. In other words, it would be the indentation of writing on the first page of a tablet which would appear four or five sheets below.

That examination can be conducted in two different ways. One is by a sidelight, holding a direct light at an oblique angle to the page. It is a visual observation. The second way is by the use of an ESDA machine. ESDA stands for electrostatic detection apparatus. The machine was developed in 1978 by Freeman and Foster of London, England. The machine is about the size of a small desktop photocopier. It has a flat platen on it that has a suction-type device that holds the page flat. A piece of Saran Wrap-type material is placed over the document. A corona bar, which gives a negative charge to certain areas of the document, is then applied, and a toner material is either sprayed or poured down over the document.

Both methods would find indented writing. I have prepared an example of the type of writing that I would find on a particular document. I took a similar type sheet of paper and wrote out my name, Special Agent, Federal Bureau of Investigation, Washington, DC.

Mr. GEKAS. Show that to counsel. This is by way of showing an example of how the process works. It is a demonstrative piece of evidence.

Mr. ATTENBERGER. Four pages below that original, I have taken the sheet, and looking at it with the naked eye, you cannot determine whether there is any indented writing on it. A photograph taken with that particular method shows hardly anything. The ESDA print does, in fact, bring up indentations on the page. Now, this is four pages below the original. In our laboratory, once that is obtained, we have a special photo unit that actually photographs and enhances that indented writing.

The next exam that I would conduct on those sheets would be a watermark exam. A watermark is placed into the paper when the slurry or the paper is still wet. Many times watermarks can also date the paper.

The last exam that could be conducted of Exhibit 154 is an ink analysis. I myself did not conduct an ink analysis, and the ink analysis was conducted by the ATF laboratory in Rockville.

Mr. GEKAS. What were your findings, then, as a result of the process which you employed in examining those documents?

Mr. ATTENBERGER. When I examined for a watermark, due to the type of paper that was employed in these writings, I found no watermark. In addition, I found no indented writing, both using the visual and the ESDA method.

Mr. GEKAS. All right. In essence, there were negative findings; is that correct?

Mr. ATTENBERGER. That is correct. It could not be determined when the documents were prepared.

Mr. GEKAS. We have House Exhibit 147 which is a report reflecting the findings or conclusions reached by this witness, which we offer into evidence. There appears to be no objection.

The CHAIRMAN. The exhibit will be admitted.

[The document referred to was marked House Exhibit No. 147 and was received in evidence.]

Mr. GEKAS. One final question. In December 1982, when you conducted these examinations, were there any other reliable tests available to detect latent writing or impressions on documents other than the ones that you employed?

Mr. ATTENBERGER. No, sir.

Mr. GEKAS. I have no further questions.

The CHAIRMAN. Is there cross-examination of the witness?

CROSS EXAMINATION

Mr. ANDERSON. Very brief.

My name is Terry Anderson, Agent. Your report indicated that no indented writing of value had been discovered. Do you recall whether there was no indentation at all or nothing of value?

Mr. ATTENBERGER. By saying no indented writing of value, I meant there may be markings, like a straight line or a scrape mark on the page, but nothing that could be construed as a handwritten notation.

Mr. **Anderson**. So, for example, I take it the exhibit you showed, the illustration you showed the committee, in fact you could have pieced together what had been written on the four pages above?

Mr. **Attenberger**. Yes, on the example that I showed.

Mr. **Anderson**. So there might be stray markings or something, but nothing you could make into a coherent——

Mr. **Attenberger**. That is correct.

Mr. **Anderson**. Did you preserve the results of this examination? I see you have these—I do not know what you call them.

Mr. **Attenberger**. With regard to the ESDA exams?

Mr. **Anderson**. Yes.

Mr. **Attenberger**. No, sir. In our laboratory, it is a policy that if the examination is negative, there is nothing to preserve. The original evidence would still be representative of what we found, so——

Mr. **Anderson**. The results of your tests, then, are just routinely discarded?

Mr. **Attenberger**. That is correct.

Mr. **Anderson**. No further questions.

The **Chairman**. Is there any redirect examination of the witness?

Mr. **Gekas**. No.

The **Chairman**. I have no questions of this witness. Do any committee members have questions?

[No response.]

The **Chairman**. If not, any reason this witness cannot be excused?

[No response.]

The **Chairman**. You are excused, Mr. Attenberger. Thank you very much for your testimony.

[Witness excused.]

The **Chairman**. Would the House please call its next witness?

Mr. **Bryant**. The House calls Antonio Cantu.

The **Chairman**. Would you raise your right hand, please? Do you, Antonio Cantu, swear and affirm that the evidence you shall give in the case now pending between the United States and Judge Alcee L. Hastings shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. **Cantu**. Yes, sir, I do.

The **Chairman**. Please be seated.

Mr. **Gekas**. For the record, please state your full name.

TESTIMONY OF ANTONIO A. CANTU

DIRECT EXAMINATION

Mr. **Cantu**. My name is Antonio, middle initial A, last name Cantu, and that is spelled C-a-n-t-u.

Mr. **Gekas**. Would you state your educational and professional background?

Mr. **Cantu**. Yes. I have a degree in chemistry received from the University of Texas at Austin, and that was received in January 1963; and then a Ph.D. in chemical physics from the same university in 1967. I did post-doctoral studies between that time and 1972 at the University of Alberta in Edmonton, Alberta, in the Department of Chemistry. In 1972, I began work with the Law Enforcement Administration.

Mr. Gekas. We are going to proceed very rapidly and then skip over all of that and qualify him as an expert, if that is——

The Chairman. I gather from the indications of respondent's counsel that there will not be questions about this witness's qualifications.

Mr. Gekas. All right. All I want to do is to go into what position he now holds, skip all the rest, qualify him as an expert, and proceed to the questioning.

The Chairman. You may proceed.

Mr. Gekas. What is the present position that you hold?

Mr. Cantu. OK, very well. I am chemist with the United States Secret Service. I work for the Technical Security Division, and my functions are those having to do with security matters and also some items having to do with forensic science.

Mr. Gekas. Then Exhibit 144, which qualifies this gentleman as an expert, is offered into evidence.

The Chairman. It will be admitted.

[The document referred to was marked House Exhibit No. 144 and was received in evidence.]

Mr. Gekas. We will begin by offering into evidence the Stipulation No. 220 and to read it only as a preface for this line of questioning.

Stipulation 220: In December 1982, Judge Hastings produced for the prosecution handwritten letters regarding Hemphill Pride, which Judge Hastings testified in *United States* v. *Hastings* were drafted on October 5, 1981.

Now, you have House Exhibit 154 which purports to be those letters, and I ask you if you can identify them.

Mr. Cantu. Yes, I can. It bears my initials that I put there during my examination.

Mr. Gekas. When did you receive that specimen?

Mr. Cantu. On the 8th of December 1982.

Mr. Gekas. What were you requested to determine?

Mr. Cantu. I was requested to do an ink and paper analysis on this and try to determine if the document was prepared on or after October 1981.

Mr. Gekas. Please state to the committee how you performed your examinations in its skeleton form, the examination.

Mr. Cantu. Very well. I will begin with the paper examination first since that was inconclusive. There was no watermark in the document, so therefore I could not go any further. So as far as paper, that is where I stopped.

As far as the ink analysis was concerned, we sample the ink on the document and obtain from it a chemical profile, let us call it, by means of certain analytical techniques, primarily multiple thin layer chromatography. Then from this profile, one uses that to compare against standard inks that we have in the—well, at the time, the Alcohol, Tobacco and Firearms library. From that, we are able to ascertain if the ink was in existence at the purported date, which is October 1981, or the ink did not come into existence until later.

Mr. Gekas. Would you indicate to the committee, then, what were your findings specifically with the ink?

Mr. CANTU. In this particular case, the inks that I analyzed all were the same formula, the black felt-tip ink, and that ink was available in October 1981. There is also a blue ball pen ink, a small little entry in the back of the last page, and that was also available in October of 1981.

Mr. GEKAS. Was that ink also available in December of 1982?

Mr. CANTU. Yes.

Mr. GEKAS. And January 1983?

Mr. CANTU. Yes, sir.

Mr. GEKAS. The fact that you found that the ink was manufactured prior to 1981, does that suggest that the writing was actually made in 1981?

Mr. CANTU. No, it does not. In fact, in that particular case, you could have a pen that was available in 1981 and made it later, or you could have made it in 1981. No conclusion can be drawn regarding the actual date that this ink could have been executed, on the basis of that examination.

Mr. GEKAS. In December 1982, when you conducted tests on this exhibit, were there any other reliable tests or techniques available which could have yielded information useful to the dating of the writing on Exhibit 154?

Mr. CANTU. No. No technique that I would call reliable at that time.

Mr. GEKAS. So it is your testimony that given the type of paper and ink used on this exhibit and the state of art in ink analysis in December 1982 when you did this, there were no tests that could determine whether the documents were written on or after October 5, 1981; is that correct?

Mr. CANTU. That is correct.

Mr. GEKAS. All right. Now, Exhibit 145 is a report reflecting that which we have just elicited in this testimony. We offer this into evidence.

The CHAIRMAN. Is there objection to House Exhibit 145?

Mr. ANDERSON. No objection.

The CHAIRMAN. It will be admitted.

[The document referred to was marked House Exhibit No. 145 and was received in evidence.]

Mr. GEKAS. And the findings that you have reported there are reflected in that report?

Mr. CANTU. Yes, sir.

Mr. GEKAS. I have no further questions.

The CHAIRMAN. Is there cross-examination?

CROSS EXAMINATION

Mr. ANDERSON. Very brief.

Dr. Cantu, you indicated you performed all of the tests that you thought available at the time to date the ink and any other mechanism you could to date the document; is that correct?

Mr. CANTU. That is correct, sir.

Mr. ANDERSON. Those would have been the same tests that you would have performed had the document been produced in October, November, December, January—from October 1981 on through the date they were produced, you would have done the same tests if you had been asked to?

Mr. **Cantu**. Yes, sir.

Mr. **Anderson**. And your findings would have been the same, wouldn't they?

Mr. **Cantu**. That is correct.

Mr. **Anderson**. The ink that was used was in existence prior to 1981 and remained in existence at the time?

Mr. **Cantu**. That is correct.

Mr. **Anderson**. And there is no way that scientific analysis could have aided this inquiry; is that correct?

Mr. **Cantu**. That is correct.

Mr. **Anderson**. Thank you, sir.

The **Chairman**. Is there any redirect?

Mr. **Gekas**. No redirect, Mr. Chairman.

The **Chairman**. I have no question for this witness. Does any member of the committee have a question? Yes, Senator Bryan.

Senator **Bryan**. Just one question, if I may.

Dr. Cantu, you were asked by the House manager, was there any other tests that you could have performed to assist you in reaching a conclusion with respect of the document that you were asked to examine, and your response was not at that time.

Mr. **Cantu**. Yes, sir.

Senator **Bryan**. My question is: Is there some new technology that is available? And if so, could that assist us in reaching a conclusion as to the date that the paper that you have before you was executed?

Mr. **Cantu**. Yes, sir, there is. It is some techniques that I developed, that I was developing, in fact, around 1981. It has to do with a so-called relative aging of ink. It is a technique that myself and other colleagues have been looking into for determining basically when an ink went on to a document. And the way the question was phrased was were there any reliable techniques then, and, no, it was not reliable at the time, particularly for this type of ink.

I was doing the work in the relative aging of ink, particularly in ball pen inks. What we have here in this document is not a ball pen ink. And within the past three or four years, there has been more work being done in making the technique of determining how extractable, for example, the ink is. And that is the way we measure how long it has been on the document, basically. It has been extended to the non-ball pen inks, and I feel that at this time there is some better reliability in trying to do something like that.

Senator **Bryan**. Dr. Cantu, in light of this evolving technology that you have shared with us, would it be possible today with that new technology to analyze the document in question and ascertain whether or not it was in existence in 1981?

Mr. **Cantu**. Or afterwards?

Senator **Bryan**. Or after.

Mr. **Cantu**. No. The reason for that is the aging process of the ink is something that seems to cease after—at least with all of the experiments that we have done, a four- or five-year period. So these things have, in a sense, aged out at this particular time if I were to analyze it.

Senator **Bryan**. So this new technology would not assist the panel in any way in ascertaining the date that the document was executed?

Mr. **Cantu**. That is right. Had I that knowledge back in 1982, then I would have performed that examination.

Senator **Bryan**. Thank you, Mr. Chairman.

The **Chairman**. Thank you.

Are there other questions from the committee?

[No response.]

The **Chairman**. Is there a reason this witness cannot be excused?

[No response.]

The **Chairman**. If not, you are excused, Mr. Cantu. We appreciate your testimony very much.

[Witness excused.]

The **Chairman**. The House will call its next witness.

Mr. **Bryant**. Mr. Chairman, at this time, the House would like to offer into evidence the prior testimony of three witnesses pursuant to the previous order of the committee.

The **Chairman**. You are free to do that. What was your intent? To read the testimony, to summarize the testimony, or to just offer it in?

Mr. **Bryant**. To read a summary.

The **Chairman**. A summary of the testimony?

Mr. **Bryant**. It is a summary that we have provided to the respondent in advance of this moment.

The **Chairman**. Respondent has a copy of this summary?

Mr. **Anderson**. Yes. Yes, Mr. Chairman.

SUMMARY OF THE PRIOR TESTIMONY OF CAROLYN McIVER, ANDREW CHISHOLM, AND ELEANOR GOLAR-WILLIAMS

Mr. **Bryant**. Mr. Chairman, at this time, the House managers offer into evidence the prior testimony of three witnesses. Their testimony was given before the Investigating Committee of the Eleventh Circuit. The Impeachment Trial Committee has previously ruled that this prior testimony may be submitted by the House in this case. The testimony is that of Carolyn McIver, Andrew Chisholm, and Eleanor Golar-Williams. In the interest of time, I will briefly summarize the relevant portions of the testimony rather than read it into the record.

The first witness is Carolyn McIver. Ms. McIver testified before the Investigating Committee that she resides in Columbia, South Carolina, and that in 1981 she was employed in the Education Division of the South Carolina Governor's office. She further testified that during 1981 her telephone numbers at her office were area code (803), 758–8825 and 758–8826. When asked whether she had ever met Hemphill Pride, Ms. McIver testified she had not met Hemphill Pride. When asked if she had any reason to believe that Hemphill Pride received a telephone call at her office at the Education Division of the South Carolina Governor's office, Ms. McIver testified, "It appears that would be highly out of the ordinary. You know, why the Education Division?"

CONFIDENTIAL AND SHALL NOT BE DISCLOSED BY ANY PERSON IN ANY PROCEEDING."

THE WITNESS: OKAY. I UNDERSTAND.

JUDGE GODBOLD: MR. WEBB.

- - -

CAROLYN ROSITO McIVER,

CALLED AS A WITNESS, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. WEBB:

Q. DR. McIVER, BY WHOM ARE YOU EMPLOYED?

A. STATE OF SOUTH CAROLINA, OFFICE OF THE GOVERNOR.

Q. ANY PARTICULAR DIVISION WITHIN THE OFFICE OF THE GOVERNOR?

A. EDUCATION DIVISION.

Q. AND HOW LONG HAVE YOU BEEN EMPLOYED IN THE EDUCATION DIVISION OF THE GOVERNOR'S OFFICE?

A. I HAVE BEEN EMPLOYED SINCE NOVEMBER 1980 AS A CONSULTANT AND BECAME A REGULAR EMPLOYEE JANUARY 1981.

Q. SO FROM JANUARY 1981, YOU BEGAN FULL TIME IN THE EDUCATION DIVISION OF THE GOVERNOR'S OFFICE?

A. YES.

Q. AND WHAT IS YOUR HOME ADDRESS, MS. McIVER?

A. TWO NINE ONE SIX LARKHALL ROAD.

JUDGE TJOFLAT: LARK?

THE WITNESS: L-A-R-K, H-A-L-L, ONE WORD. COLUMBIA, SOUTH CAROLINA, 29223.

BY MR. WEBB:

Q. HOW LONG HAVE YOU RESIDED AT THAT ADDRESS?

A. LESS THAN FIVE YEARS.

Q. WELL, CAN YOU TIE IT INTO A TIME PERIOD? YOU SAID YOU BEGAN IN THE EDUCATION DIVISION IN NOVEMBER OF 1980. WERE YOU RESIDING AT THE LARKHALL ADDRESS AT THAT TIME?

A. YES, I WAS.

Q. SO SINCE NOVEMBER 1980 FORWARD YOU HAVE BEEN LIVING AT YOUR CURRENT ADDRESS?

JUDGE GODBOLD: YOU MEAN 1980.

MR. WEBB: 1980 I BELIEVE I SAID.

BY MR. WEBB:

Q. SINCE NOVEMBER OF 1980, YOU HAVE BEEN LIVING AT YOUR CURRENT ADDRESS?

A. YES, I HAVE BEEN.

Q. WHAT IS YOUR CURRENT TELEPHONE NUMBER AT YOUR HOME ADDRESS?

A. AREA CODE 803-736-0420.

Q. AND HAS THAT BEEN YOUR TELEPHONE NUMBER AT THE LARK HALL ADDRESS SINCE NOVEMBER 1980?

A. YES, IT HAS BEEN.

Q. HAVE YOU HAD ANY OTHER TELEPHONE NUMBERS AT YOUR HOME ADDRESS?

A. NO, I HAVE NOT.

Q. WHAT IS YOUR TELEPHONE NUMBER AT YOUR OFFICE IN THE GOVERNOR'S OFFICE OF THE EDUCATION DIVISION?

A. AREA CODE 803-758-8825, EXTENSION 75.

Q. THAT'S YOUR CURRENT NUMBER AT THE EDUCATION DIVISION?

A. THAT IS THE CURRENT NUMBER, MY CURRENT NUMBER.

Q. AND WHEN DID YOU HAVE THE EXTENSION 75 ADDED TO THE NUMBER?

A. SOMETIME DURING THIS YEAR.

Q. SOMETIME IN 1985?

A. RIGHT. I BELIEVE.

Q. PRIOR TO THIS YEAR, WHAT WAS YOUR TELEPHONE NUMBER AT THE EDUCATION DIVISION?

A. THE SAME, WITHOUT THE EXTENSION.

Q. 803-758-8825?

A. THAT'S CORRECT.

JUDGE TJOFLAT: PRIOR TO WHEN?

MR. WEBB: PRIOR TO THIS YEAR.

JUDGE TJOFLAT: 1985?

THE WITNESS: YES.

BY MR. WEBB:

Q. WAS THAT YOUR TELEPHONE NUMBER IN 1980 WHEN YOU JOINED THE EDUCATION DIVISION OF THE GOVERNOR'S OFFICE?

A. YES. I THINK SO.

Q. SO FROM 1980 THROUGH 1984, EARLY 1985, YOUR TELEPHONE

NUMBER WAS 803-758-8825?

A. RIGHT.

Q. WAS THERE ANY OTHER NUMBER THAT YOU HAD AT THE GOVERNOR'S OFFICE, DIVISION OF EDUCATION?

A. THERE IS ANOTHER NUMBER.

Q. WHAT'S THAT NUMBER?

A. I'M NOT POSITIVE, BUT I BELIEVE IT'S 5 -- 758-2651.

JUDGE TJOFLAT: WHAT IS THAT AGAIN?

THE WITNESS: 758-2651.

BY MR. WEBB:

Q. IS THAT NUMBER GIVEN OUT TO THE PUBLIC IN GENERAL?

A. NO, IT IS NOT.

Q. DO YOU KNOW WHEN THAT NUMBER WAS ASSIGNED TO THE EDUCATION DIVISION OF THE GOVERNOR'S OFFICE?

A. NO, I DO NOT.

Q. WAS THAT NUMBER IN PLACE FOR THE EDUCATION DIVISION IN 1981?

A. I DON'T THINK SO. NO, IT WAS NOT. I DON'T THINK SO.

Q. SO THAT THE NUMBER YOU JUST GIVE US, THE 758-2651 NUMBER, CAME ABOUT SOMETIME AFTER 1981?

A. YES, IT DID.

Q. ARE THERE ANY OTHER NUMBERS FOR THE EDUCATION DIVISION OF THE GOVERNOR'S OFFICE, TELEPHONE NUMBERS?

A. WELL, IT'S ON A ROTARY. WE HAVE 8826, BUT IF YOU RING 25 IT WOULD AUTOMATICALLY PLACE YOU ON 26.

Q. IF 25 IS BUSY?

A. YES.

Q. HOW LONG HAS THE 8826 NUMBER BEEN IN PLACE FOR THE EDUCATION DIVISION? SINCE NOVEMBER OF 1980?

A. TO MY REMEMBRANCE, YES.

Q. WHAT'S THE OFFICE ADDRESS OF THE GOVERNOR'S OFFICE, EDUCATION DIVISION?

A. 1205 PENDLETON STREET, ROOM 440, COLUMBIA, SOUTH CAROLINA, 29201.

Q. AND HOW LONG HAS YOUR OFFERS HAD THAT ADDRESS?

A. IT HAS HAD THE MAIN ADDRESS SINCE MY BEGINNING OF EMPLOYMENT, BUT THE ROOM NUMBERS HAVE CHANGED FROM TIME TO TIME.

Q. WHEN IS THE LAST TIME YOU RECALL THE ROOM NUMBER CHANGING?

A. MAYBE ABOUT 14 MONTHS AGO.

Q. CAN YOU GIVE US THE ROOM NUMBER IN 1981?

A. FOUR THIRTY-SIX.

Q. ROOM 436?

A. RIGHT.

Q. AND THE REST OF THE ADDRESS REMAINED THE SAME?

A. YES.

Q. MS. McIVER, DO YOU KNOW JUDGE ALCEE HASTINGS?

A. YES, I DO.

Q. AND CAN YOU DESCRIBE FOR THE COMMITTEE HOW YOU FIRST

CAME TO KNOW JUDGE HASTINGS?

A. I KNEW ABOUT JUDGE HASTINGS WHEN I WAS A STUDENT AT FLORIDA A & M.

Q. WHEN WAS THAT?

A. SIXTY THROUGH '64 AND AGAIN '67 AND '68.

Q. DO YOU HAVE A DEGREE FROM FLORIDA A & M?

A. I HAVE TWO.

Q. WHAT ARE THEY?

A. BACHELOR OF SCIENCE AND MASTER OF EDUCATION.

Q. AND YOU SAY YOU WERE AT FLORIDA A & M TWO PERIODS OF TIME AND YOU MET JUDGE HASTINGS WHILE THERE. WHICH PERIOD?

A. THE SECOND PERIOD, '67 AND '68, DURING THAT TIME.

Q. AND WILL YOU DESCRIBE FOR US THE CIRCUMSTANCES UNDER WHICH YOU FIRST MET JUDGE HASTINGS?

A. I WAS IN TAMPA -- I MET HIM IN TAMPA, FLORIDA. I WAS AT A GATHERING, AND HE WAS PRESENT AT THIS GATHERING, AND I MET HIM.

Q. DID YOU THEREAFTER CONTINUE TO SEE JUDGE HASTINGS OR MAINTAIN A RELATIONSHIP WITH HIM?

A. NO, I DID NOT.

Q. DID YOU SUBSEQUENTLY AFTER FIRST MEETING HIM IN 1967 OR '68 RENEW YOUR FRIENDSHIP OR ACQUAINTANCESHIP WITH JUDGE HASTINGS?

A. WOULD YOU REPEAT THAT, PLEASE?

Q. YOU SAID YOU MET JUDGE HASTINGS IN 1967 OR 1968 FOR

THE FIRST TIME.

A. RIGHT.

Q. DID YOU CONTINUE THEREAFTER TO KEEP UP A FRIENDSHIP WITH HIM?

A. NO, I DID NOT.

Q. DID YOU AT SOME LATER TIME TAKE UP A FRIENDSHIP WITH HIM OR RESUME YOUR FRIENDSHIP WITH HIM? DID YOU MEET AGAIN AT SOME LATER TIME?

A. I MET HIM SOMETIME LATER.

Q. WHEN DID YOU NEXT MEET HIM APPROXIMATELY?

A. I BELIEVE IT WAS AROUND 1981.

Q. CAN YOU DESCRIBE THE CIRCUMSTANCES OF WHEN YOU MET JUDGE HASTINGS AROUND 1981?

A. WELL, IF YOU CONSIDER TALKING OVER THE PHONE A MEETING, I MET HIM OVER THE PHONE.

Q. IN 1981?

A. IN 1981. I CALLED MIAMI.

Q. YOU CALLED HIM IN MIAMI IN 1981?

A. RIGHT.

Q. BETWEEN 1967 AND 1981, DID YOU HAVE ANY TELEPHONE CONTACT WITH JUDGE HASTINGS?

A. NONE WHATSOEVER.

Q. WHAT PROMPTED YOU TO CALL JUDGE HASTINGS IN 1981?

A. A FRIEND.

Q. CAN YOU IDENTIFY THE FRIEND?

A. A YOUNG LADY BY THE NAME OF GERRI TAYLOR.

Q. WHO IS GERRI TAYLOR?

A. A FRIEND.

Q. DOES SHE LIVE IN COLUMBIA?

A. NO. SHE LIVED IN TALLAHASSEE.

Q. HOW DID GERRI TAYLOR PLAY INTO YOUR CALLING JUDGE HASTINGS IN 1981?

A. SHE ASKED ME TO CALL HIM.

Q. FOR WHAT REASON?

A. SHE FELT I SHOULD MEET HIM.

Q. DID SHE GIVE YOU ANY OTHER EXPLANATION?

A. NO. THAT HE WAS AN AVAILABLE YOUNG MAN.

Q. DID YOU INDICATE TO HER THAT YOU ALREADY KNEW JUDGE HASTINGS?

A. NO, I DID NOT.

Q. OKAY.

AND DO YOU RECALL WHEN IN 1981 THAT YOU CALLED JUDGE HASTINGS?

A. IT HAD TO BE LATER IN THE YEAR LIKE NOVEMBER -- I CAN'T REALLY SAY. I DON'T QUITE REMEMBER.

Q. LET ME ASK YOU THIS. DO YOU RECALL THAT JUDGE HASTINGS WAS INDICTED BY A FEDERAL GRAND JURY?

A. NOT AT THE TIME, NO.

Q. NO. DO YOU RECALL THE FACT OF THE INDICTMENT? WERE YOU AWARE THAT JUDGE HASTINGS WAS INDICTED?

A. NO, I WAS NOT.

Q. YOU NEVER BECAME AWARE --

A. OH, I BECAME AWARE BUT NOT AT THE INITIAL FIRST TELEPHONE CALL.

Q. I'M TRYING TO GIVE YOU A DATE. JUDGE HASTINGS WAS INDICTED IN DECEMBER OF 1981. DOES THAT HELP YOU PLACE WHEN YOU WOULD HAVE FIRST SPOKEN WITH JUDGE HASTINGS?

A. I DON'T KNOW. WHEN I WAS INTERVIEWED, THE YOUNG LADY HAD A DATE OF NOVEMBER '81, SO I WOULD HAVE TO GO ALONG WITH THAT DATE BECAUSE I DON'T REMEMBER.

Q. WHEN YOU WERE INTERVIEWED BY THE F.B.I.?

A. RIGHT. SHE HAD A DATE OF NOVEMBER '81.

Q. IS THERE ANY EVENT THAT YOU CAN TIE INTO WHEN YOU WOULD HAVE FIRST SPOKEN TO JUDGE HASTINGS?

A. THERE IS AN EVENT. I WENT DOWN TO TALLAHASSEE TO ATTEND A CONFERENCE, AND IT APPEARED THAT THE CONFERENCE WAS THE LATER PART OF THE YEAR, EARLY FALL.

MS. TAYLOR WAS IN ATTENDANCE AT THIS CONFERENCE, AND THIS IS WHERE JUDGE HASTINGS' NAME CAME UP BECAUSE THE BLACK ATTORNEYS IN FLORIDA WERE HOLDING A CONFERENCE IN THE SAME HOTEL, BUT JUDGE HASTINGS WAS NOT PRESENT AT THIS CONFERENCE.

Q. AND YOU BELIEVE THAT IT WAS THERE THAT YOU DISCUSSED WITH MS. TAYLOR WHETHER YOU SHOULD CALL JUDGE HASTINGS?

A. NOT WHETHER I SHOULD CALL HIM. SHE RECOMMENDED.

Q. THAT YOU SHOULD CALL HIM?

A. RIGHT. THAT SHE HAD SOMEBODY THAT SHE WOULD WANT ME TO MEET.

Q. IS IT POSSIBLE THAT THIS MEETING WOULD HAVE BEEN IN 1980 OR EARLIER IN 1981, THIS CONFERENCE THAT YOU ARE DESCRIBING?

A. IT COULD HAVE BEEN EARLY 1981. I JUST, YOU KNOW, DON'T HAVE THESE DATES, BUT IT WOULDN'T BE DIFFICULT TO ASCERTAIN THAT INFORMATION.

Q. DO YOU HAVE SOME RECORD FROM WHICH YOU COULD ASCERTAIN THE DATE OF THE CONFERENCE?

A. I CAN JUST CALL FLORIDA A & M AND FIND OUT BECAUSE THEY SPONSORED THE CONFERENCE.

Q. AND IT WAS IN TALLAHASSEE?

A. TALLAHASSEE.

Q. BEFORE THIS CONFERENCE IN TALLAHASSEE, HAD YOU HAD ANY TELEPHONE CONVERSATIONS WITH JUDGE HASTINGS THAT YOU CAN RECALL?

A. NO. I MENTIONED THAT. I HAVE NOT SEEN; HAVE NOT TALKED.

Q. AFTER YOU CALLED JUDGE HASTINGS IN 1981, DID YOU SEE HIM?

A. I SAW HIM.

Q. DID YOU TAKE UP A FRIENDSHIP WITH HIM?

A. WELL, WHAT DO YOU MEAN BY FRIENDSHIP?

Q. WELL, DID YOU START SEEING JUDGE HASTINGS?

A. I HAVE SEEN HIM.

Q. ON A FRIENDSHIP BASIS?

A. I HAVE SEEN HIM, YES, AS A FRIEND. NOT AS AN ENEMY. AS A FRIEND, YES.

Q. SINCE THIS CONFERENCE IN 1981, APPROXIMATELY HOW MANY TIMES HAVE YOU SEEN JUDGE HASTINGS? DO YOU KNOW?

A. TWICE.

Q. DO YOU RECALL WHEN THAT WAS, THOSE TWO TIMES?

A. I CAN RECALL ONE TIME WAS JANUARY, BECAUSE THE SUPER BOWL GAME WAS ON.

Q. JANUARY OF WHICH YEAR? DO YOU KNOW?

A. I'M NOT SURE WHETHER IT WAS '82 OR '83.

Q. CAN YOU RECALL THE OTHER TIME THAT YOU SAW JUDGE HASTINGS?

A. IT WAS -- LOOK LIKE IT WAS JULY OR AUGUST.

JUDGE TJOFLAT: WHICH WAS THE FIRST MEETING?

THE WITNESS: THE ONE IN JULY OR AUGUST WAS THE FIRST.

BY MR. WEBB:

Q. WOULD THAT HAVE BEEN IN '82?

A. IT MAY HAVE BEEN, AND IT MAY HAVE BEEN LATE '81. I JUST CAN'T REMEMBER.

Q. WELL, JULY OR AUGUST -- YOU THOUGHT THE CONFERENCE WAS IN NOVEMBER OF 1981.

A. WELL, IT WAS FOLLOWING THE CONFERENCE. IT WAS FOLLOWING THE CONFERENCE, BECAUSE THE CONFERENCE INITIATED

IT.

Q. IS IT POSSIBLE THAT THE CONFERENCE WAS BEFORE JULY OR AUGUST OF 1981?

A. IT'S POSSIBLE. IT'S POSSIBLE. I JUST --

JUDGE POINTER: WELL, AT THE FIRST MEETING YOU HAD IN JULY OR AUGUST, DO YOU KNOW WHETHER JUDGE HASTINGS HAD BEEN INDICTED AT THAT TIME OR WAS IT AT A LATER TIME WHEN HE GOT INDICTED?

THE WITNESS: I BELIEVE IT WAS LATER. IF IT WAS BEFORE, I KNEW NOTHING ABOUT IT.

JUDGE TJOFLAT: YOU HAVE NO RECOLLECTION OF HIM HAVING BEEN INDICTED --

THE WITNESS: NO.

JUDGE TJOFLAT: -- AT THE TIME YOU SAW HIM IN JULY OR AUGUST?

THE WITNESS: NO.

BY MR. WEBB:

Q. LET ME SHOW YOU, MS. McIVER, WHAT HAS PREVIOUSLY BEEN MARKED AS IC EXHIBIT 553 AND ASK IF YOU CAN IDENTIFY THE TOP CHECK ON THAT DOCUMENT AS A CHECK DRAWN ON YOUR ACCOUNT BY YOU.

A. YES. THAT IS CORRECT.

Q. MADE PAYABLE TO ALCEE HASTINGS?

A. RIGHT.

Q. AND THE DATE ON THAT WOULD BE FEBRUARY 12TH, 1982?

A. RIGHT.

Q. SO THEN YOUR FIRST MEETING WITH JUDGE HASTINGS WOULD HAVE BEEN PRIOR TO FEBRUARY OF 1982?

A. RIGHT.

Q. AND YOU BELIEVE IT WAS JULY OR AUGUST WOULD BE THE MONTHS IN WHICH YOU HAD THE MEETING?

A. I BELIEVE, RIGHT.

Q. WHICH WOULD TAKE US BACK THEN JULY OR AUGUST OF 1981?

A. RIGHT.

Q. PRIOR TO THAT FIRST MEETING IN JULY OR AUGUST OF 1981, HAD YOU HAD TELEPHONE CONVERSATIONS WITH JUDGE HASTINGS?

A. I CALLED HIM.

Q. BESIDES THAT ONE CALL, DID YOU HAVE ANY OTHER TELEPHONE CONVERSATIONS WITH HIM THAT YOU CAN RECALL?

A. I HAVE HAD SEVERAL PHONE CALLS WITH HIM.

Q. FOCUSING NOW PRIOR TO YOUR MEETING IN JULY OR AUGUST OF 1981.

A. I HAVE HAD SEVERAL PHONE CALLS WITH HIM PRIOR TO THE MEETING.

Q. DID JUDGE HASTINGS EVER CALL YOU AT YOUR OFFICE, THAT IS THE GOVERNOR'S OFFICE, EDUCATION DIVISION?

A. YES, HE HAS.

Q. HAD YOU GIVEN HIM YOUR TELEPHONE NUMBER AT THAT OFFICE?

A. I GAVE HIM MY TELEPHONE NUMBER.

Q. AND THAT WOULD HAVE BEEN THE 758-8825 NUMBER?

A. THAT'S CORRECT.

Q. FOCUSING SPECIFICALLY ON THE DATE OF MAY 5TH, 1981, DO YOU RECALL A TELEPHONE CONVERSATION WITH JUDGE HASTINGS ON THAT DATE?

A. MAY 5TH. NO, I DON'T.

Q. DO YOU RECALL THE NATURE OF YOUR CONVERSATIONS WITH JUDGE HASTINGS PRIOR TO YOUR MEETING IN JULY OR AUGUST OF 1981?

A. I HAVE AN IDEA.

Q. WHAT'S YOUR IDEA?

A. OKAY, THAT I WAS INTERESTED IN MEETING HIM, CENTERED AROUND THAT.

Q. PERSONAL MATTERS?

A. PERSONAL, RIGHT.

Q. OF ESTABLISHING A DATE BETWEEN YOU AND JUDGE HASTINGS?

A. JUST TRYING TO.

Q. DO YOU RECALL SPEAKING WITH JUDGE HASTINGS AFTER YOUR MEETING IN JULY OR AUGUST, THAT IS SPEAKING BY TELEPHONE?

A. I TALKED WITH HIM.

JUDGE TJOFLAT: WHERE DID YOU MEET IN JULY OR AUGUST, 1981? WHERE WAS IT?

THE WITNESS: I WAS DOWN IN MIAMI.

JUDGE TJOFLAT: YOU MET HIM IN MIAMI?

THE WITNESS: I MET HIM IN MIAMI.

JUDGE TJOFLAT: ALL RIGHT.

BY MR. WEBB:

Q. AFTER THE MEETING IN MIAMI, YOU SAY YOU DID TALK WITH JUDGE HASTINGS BY TELEPHONE?

A. RIGHT.

Q. DO YOU RECALL THE FREQUENCY OF THOSE TELEPHONE CONVERSATIONS?

A. NO, I DON'T, BUT I KNOW I WAS CONSTANTLY SOLICITING ADVICE.

Q. FROM JUDGE HASTINGS?

A. FROM JUDGE HASTINGS.

Q. AND WAS HE CALLING YOU AS WELL? WHEN YOU SAY YOU WERE SOLICITING ADVICE FROM HIM, WAS HE ALSO CALLING YOU?

A. HE HAS CALLED.

Q. AFTER YOUR MEETING IN MIAMI, DID HE CALL YOU AT YOUR OFFICE?

A. YOU KNOW, THAT'S DIFFICULT, BECAUSE HE HAS CALLED, BUT I DON'T KNOW THE FREQUENCY OF THE CALLS. BUT HE HAS CALLED, SO I WOULD HAVE TO SAY YES, THE FACT THAT HE HAS CALLED THE OFFICE.

Q. DID HE ALSO CALL YOU AT YOUR HOME ADDRESS, HOME TELEPHONE?

A. HE CALLED ME AT HOME.

Q. SO WHAT YOU ARE SAYING, IT'S HARD FOR YOU TO DISTINGUISH BETWEEN WHETHER YOU GOT THE CALL AT HOME OR

WHETHER YOU GOT IT AT THE OFFICE?

A. THERE REALLY WEREN'T THAT MANY CALLS.

Q. DO YOU HAVE ANY RECOLLECTION AS TO HOW MANY CALLS, FOCUSING IN THIS PERIOD OF 1981?

A. NO, I DON'T.

Q. DO YOU RECALL RECEIVING A TELEPHONE CALL AT YOUR OFFICE FROM JUDGE HASTINGS ON SEPTEMBER 2ND, 1981?

A. JUST TO RECALL IT, NO.

Q. WELL, IS THERE ANYTHING THAT WOULD HAVE BEEN HAPPENING IN SEPTEMBER OF 1981 THAT YOU AND JUDGE HASTINGS WOULD HAVE BEEN SPEAKING ABOUT THAT MIGHT HELP YOU REFRESH YOUR RECOLLECTION?

A. SEPTEMBER? UNLESS THAT WAS AFTER THE CONFERENCE AND I CALLED HIM AND HE RETURNED THE CALL.

I JUST CAN'T REMEMBER ANYTHING SIGNIFICANT COULD BE HAPPENING IN SEPTEMBER OF '81.

Q. NOW, SINCE 1981, HAVE YOU CONTINUED TO KEEP UP YOUR CONTACTS WITH JUDGE HASTINGS?

A. SPARINGLY, YES.

Q. DO YOU STILL --

JUDGE TJOFLAT: EXCUSE ME.

WHEN WAS THE SUPER BOWL? THE SECOND MEETING OCCURRED AT THE TIME OF THE SUPER BOWL.

THE WITNESS: RIGHT.

JUDGE TJOFLAT: WAS THAT THE FOLLOWING YEAR, 1982?

THE WITNESS: RIGHT.

JUDGE TJOFLAT: JANUARY 1982? HAD HE BEEN INDICTED AT THAT TIME?

THE WITNESS: HE HAD BEEN.

JUDGE TJOFLAT: ALL RIGHT. WAS IT SHORTLY AFTER HE WAS INDICTED THAT YOU MET HIM THE SECOND TIME?

THE WITNESS: RIGHT.

JUDGE TJOFLAT: WHERE WAS THAT?

THE WITNESS: AT THE COLUMBIA AIRPORT.

JUDGE TJOFLAT: ALL RIGHT.

HE FLEW INTO COLUMBIA?

THE WITNESS: HE FLEW INTO COLUMBIA.

JUDGE TJOFLAT: HOW LONG WAS HE IN COLUMBIA?

THE WITNESS: I REALLY DON'T KNOW.

JUDGE TJOFLAT: HOW LONG DID THE MEETING TAKE PLACE AT THE COLUMBIA AIRPORT?

THE WITNESS: NO. I SERVED AS A TAXI, A FREE TAXI.

JUDGE TJOFLAT: WHERE DID YOU TAKE HIM?

THE WITNESS: I DROPPED HIM OFF AT THE HOLIDAY INN NORTHEAST.

JUDGE TJOFLAT: HOLIDAY INN NORTHEAST AT COLUMBIA?

THE WITNESS: IN COLUMBIA.

JUDGE TJOFLAT: AND HE WAS STAYING THERE?

THE WITNESS: HE CHECKED IN THERE, SO I GUESS HE WAS STAYING THERE.

JUDGE GODBOLD: HOW LONG DID YOU STAY IN HIS COMPANY ON THAT OCCASION?

THE WITNESS: SEVERAL HOURS.

JUDGE TJOFLAT: OKAY. DO YOU KNOW HOW LONG HE STAYED IN COLUMBIA?

THE WITNESS: NO, I DON'T, BECAUSE I DIDN'T TAKE HIM BACK TO THE AIRPORT.

JUDGE TJOFLAT: DID YOU TAKE HIM ANYWHERE ELSE FROM THE HOLIDAY INN?

THE WITNESS: AFTER HE CHECKED IN, HE WENT OUT TO MY HOUSE, AND WE WATCHED THE GAME.

JUDGE TJOFLAT: DID YOU TAKE HIM ANYWHERE FROM THERE?

THE WITNESS: YES. THE NEXT MORNING I PICKED HIM UP AND DROPPED HIM OFF AT AN ATTORNEY'S OFFICE.

JUDGE TJOFLAT: DO YOU REMEMBER WHO THAT WAS?

THE WITNESS: HE DIDN'T TELL ME.

JUDGE TJOFLAT: WHERE WAS THE OFFICE?

THE WITNESS: OKAY, BECAUSE I HAD A DIFFICULT TIME FINDING IT THAT MORNING. DOES ANYBODY KNOW ANYTHING ABOUT COLUMBIA? I CAN DESCRIBE IT.

JUDGE TJOFLAT: WHY DON'T YOU DESCRIBE IT AS BEST YOU CAN?

THE WITNESS: OKAY. GOING DOWN BULL STREET, I HAD TO MAKE A LEFT, AND IT WAS THE PARALLEL STREET.

JUDGE TJOFLAT: TO BULL?

THE WITNESS: UH-HUH. BUT I DON'T RECALL THE NAME OF THE STREET.

JUDGE TJOFLAT: WAS IT IN AN OFFICE BUILDING?

THE WITNESS: IT LOOKED, APPEARED, AS I CAN VISUALIZE, THAT IT MIGHT HAVE BEEN A WHITE BUILDING THAT MIGHT HAVE BEEN TWO STORIES. I DON'T KNOW, BUT I CAN FIND THE BUILDING.

JUDGE TJOFLAT: DID YOU SEE HIM AFTER YOU DROPPED HIM AT THE LAWYER'S OFFICE?

THE WITNESS: NO, I DID NOT.

JUDGE TJOFLAT: OKAY. THANK YOU.

BY MR. WEBB:

Q. DO YOU KNOW WHY JUDGE HASTINGS WAS MEETING WITH THE LAWYER? DID HE DISCUSS WITH YOU --

A. NO, HE DID NOT.

Q. -- HIS PURPOSE IN BEING THERE?

A. NO, HE DID NOT.

Q. YOU SAY THE STREET RUNS PARALLEL TO BULL STREET?

A. RIGHT.

Q. DO YOU KNOW WHAT HUNDRED BLOCK OF BULL STREET THAT YOU WERE MAKING YOUR LEFT TURN?

A. NO, BECAUSE I DIDN'T GO DIRECTLY THERE. I HAD TO FIND IT. BUT IT WAS NOT PAST GERVAIS. I KNOW THAT.

Q. PAST WHICH STREET?

A. GERVAIS.

Q. WOULD YOU SPELL THAT?

A. G-E-R-V-A-I-S.

Q. THANK YOU.

DID YOU CONTINUE TO KEEP UP YOUR CONTACT WITH JUDGE HASTINGS AFTER YOUR MEETING IN JANUARY OF '82 FOR THE SUPER BOWL?

A. NOT ON A REGULAR BASIS, NO.

Q. FROM THE EXHIBIT I HAVE SHOWN YOU, 553, YOU MADE A CONTRIBUTION TO JUDGE HASTINGS IN CONNECTION WITH HIS CRIMINAL CASE?

A. RIGHT.

Q. CAN YOU TELL THE COMMITTEE HOW YOU HAPPENED TO MAKE THAT CONTRIBUTION? WERE YOU SOLICITED?

A. I WASN'T SOLICITED, BUT I KNEW THAT THERE WAS A CAMPAIGN IN THE MIAMI AREA FOR JUDGE HASTINGS' FUND, AND I CONTRIBUTED.

Q. DO YOU KNOW TO WHOM YOU SENT THE CHECK THAT'S BEEN MARKED AS 553?

A. I SENT IT DIRECTLY TO HIM.

Q. TO JUDGE HASTINGS?

A. TO JUDGE HASTINGS.

Q. DID YOU HAVE ANY CONVERSATIONS WITH JUDGE HASTINGS ABOUT FUNDRAISING?

A. I CAN'T RECALL A CONVERSATION.

Q. AND YOU DON'T RECALL BEING SOLICITED TO MAKE THE CONTRIBUTION?

A. NO, NOT SOLICITED, NO.

Q. DO YOU KNOW HEMPHILL PRIDE?

A. NO, I DO NOT.

Q. DO YOU HAVE ANY INFORMATION OR REASON TO BELIEVE THAT HEMPHILL PRIDE WOULD HAVE BEEN RECEIVING TELEPHONE CALLS AT YOUR OFFICE?

A. DO I HAVE ANY INFORMATION?

Q. ANY INFORMATION OR REASON TO BELIEVE THAT HEMPHILL PRIDE WOULD HAVE BEEN RECEIVING TELEPHONE CALLS AT YOUR OFFICE WITH THE TELEPHONE NUMBER 758-8825 IN 1981.

A. NO.

Q. AT ANY TIME DO YOU HAVE ANY REASON TO BELIEVE THAT HEMPHILL PRIDE WOULD HAVE BEEN RECEIVING TELEPHONE CALLS AT YOUR OFFICE?

A. IT APPEARS THAT WOULD BE HIGHLY OUT OF THE ORDINARY. YOU KNOW, WHY THE EDUCATION DIVISION?

Q. I'M SORRY. WHAT DID YOU SAY ABOUT THE EDUCATION DIVISION?

A. I SAY IT APPEARS THAT THAT WOULD BE HIGHLY OUT OF THE ORDINARY. YOU KNOW, WHY THE EDUCATION DIVISION WHEN THERE ARE SO MANY OTHER DIVISIONS ON THE FLOOR WITH OPEN TELEPHONE LIKE THE EDUCATION DIVISION.

Q. WERE THE EDUCATION DIVISION TELEPHONES OPEN TELEPHONES?

A. I SAY OPEN BECAUSE WHEN STAFF LEAVES, ANYBODY OFF THE

STREET CAN COME INTO THE BROWN BUILDING AND USE THE TELEPHONES.

Q. WHAT WERE THE OFFICE HOURS FOR THE EDUCATION DIVISION IN 1981?

A. EIGHT THIRTY UNTIL 5:00 O'CLOCK.

Q. AND DURING REGULAR BUSINESS HOURS, COULD ANYBODY COME IN OFF THE STREET AND USE THE TELEPHONES AT THE EDUCATION DIVISION?

A. NO. UNLESS IT WOULD BE DURING THE LUNCH TIME, 12:00 TO 1:00.

Q. AND YOU HAVE NEVER MET MR. PRIDE?

A. I HAVE NEVER MET MR. PRIDE.

Q. WHO ELSE IN YOUR OFFICE USED THE TELEPHONE NUMBER 758-8825?

A. NOW OR DURING THAT TIME?

Q. DURING 1981.

A. IT'S DIFFICULT TO SAY, BECAUSE THE TURN OVER OF TEMPORARY HELP WAS SO MUCH ON A REGULAR BASIS, ANYBODY COULD USE THE PHONES.

Q. WELL, FOCUSING SPECIFICALLY ON THE SPRING AND SUMMER OF 1981, FROM MAY THROUGH SEPTEMBER OF 1981, WERE THERE CERTAIN PEOPLE WHO WERE PERMANENTLY ASSIGNED TO YOUR OFFICE THAT WOULD BE USING IN THE REGULAR COURSE THE NUMBER 758-8825?

A. THERE WAS A REGULAR ASSIGNED STAFF.

Q. AND WHO WERE THOSE PEOPLE? DO YOU RECALL?

A. '81. BRENDA STORK, I BELIEVE.

Q. LET ME SHOW YOU WHAT HAS PREVIOUSLY BEEN MARKED AS IC EXHIBIT 286. IT'S A NOVEMBER 10, 1980 MEMORANDUM FROM MILTON KIMSON TO THE GOVERNOR'S STAFF RELATING TO THE EDUCATION DIVISION.

THAT'S A YEAR EARLIER, BUT DOES THAT HELP YOU IN IDENTIFYING THE PEOPLE WORKING IN THE OFFICE IN THE SPRING AND SUMMER OF 1981?

A. YES. I DO NOT KNOW MS. KIRKLAND. I CAN'T RECALL HER.

Q. WHAT ABOUT THE OTHER PEOPLE?

A. YES, I DO.

Q. WHO WERE THEY? FOR EXAMPLE, ONE OF THEM, MR. DREW, WOULD HE HAVE BEEN IN THE OFFICE IN 1981?

A. YES, HE WOULD HAVE BEEN.

Q. AND YOURSELF?

A. AND MYSELF.

Q. AND YOU DON'T RECALL MS. KIRKLAND?

A. VERY VAGUELY. NOW THAT I SEE -- VERY VAGUELY. APPARENTLY SHE DIDN'T LAST VERY LONG.

Q. CAN YOU RECALL ANY OTHER PEOPLE WHO WERE IN YOUR OFFICE IN THE SPRING AND SUMMER OF 1981?

A. I REALLY DON'T, UNLESS IT WAS MS. BRENDA STORK, BECAUSE THE TURN OVER WAS SO GREAT IN THAT OFFICE.

Q. WHO WAS MS. STORK?

A.   SHE WORKED AS SECRETARY.

Q.   FOR YOUR OFFICE?

A.   YES.

Q.   SO IS IT FAIR TO SAY THEN THERE WERE A HANDFULL OF PEOPLE, THREE OR FOUR PEOPLE, WHO HAD ACCESS TO THE 758-8825 TELEPHONE NUMBER IN THE SPRING AND SUMMER OF 1981?

A.   AT ONE TIME OR ANOTHER, YES.

Q.   NOW, DID YOU EVER HAVE ANY CONVERSATION, MS. McIVER, WITH JUDGE HASTINGS OR ANY OF HIS ATTORNEYS ABOUT APPEARING AS A WITNESS IN THE CRIMINAL TRIAL OF JUDGE HASTINGS?

A.   THERE WAS A STATEMENT MADE REGARDING THAT.

Q.   FIRST OF ALL, WHO MADE THE STATEMENT?

A.   I DID.

Q.   AND WHEN DID YOU MAKE THE STATEMENT?

A.   I DON'T RECALL THE TIME.

Q.   BEFORE OR AFTER THE TRIAL?

A.   OR DURING THE PROCESS. I CAN IMAGINE IT WAS DURING THE PROCESS OF THE TRIAL.

Q.   TO WHOM DID YOU MAKE THE STATEMENT?

A.   TO JUDGE HASTINGS.

Q.   WAS THIS IN A TELEPHONE CONVERSATION OR IN A FACE TO FACE MEETING?

A.   NO. TELEPHONE CONVERSATION.

Q.   DO YOU KNOW WHEN THIS TELEPHONE CONVERSATION TOOK PLACE?

A. I DON'T.

Q. DO YOU KNOW WHERE YOU WERE WHEN YOU HAD THE TELEPHONE CONVERSATION?

A. NO, I DON'T.

Q. DON'T KNOW WHETHER YOU WERE AT YOUR HOME, YOUR OFFICE OR SOME OTHER PLACE?

A. RIGHT.

Q. DO YOU KNOW WHO PLACED THE CALL?

A. I DON'T KNOW THAT, EITHER.

Q. DO YOU RECALL THE SUBSTANCE OF THE CONVERSATION?

A. REGARDING A CHARACTER WITNESS.

Q. I ASKED YOU IF YOU EVER TALKED TO JUDGE HASTINGS OR HIS LAWYERS ABOUT BEING A WITNESS AT TRIAL, AND YOU SAID THERE WAS A STATEMENT MADE.

CAN YOU TELL ME THE SUBSTANCE --

A. OKAY. WELL, I ASKED THE QUESTION, BECAUSE I WAS INFORMED THAT HE HAD LISTED MY NAME AS A CHARACTER WITNESS.

Q. I SEE.

A. AND I WAS QUESTIONING HIM DID HE OR DID HE NOT.

Q. WHO INFORMED YOU THAT HE HAD LISTED YOUR NAME AS A CHARACTER WITNESS? SOMEBODY FROM THE GOVERNMENT?

A. A REPRESENTATIVE FROM THE F.B.I.

Q. AND THIS WASN'T IN YOUR RECENT INTERVIEW WITH THE F.B.I.?

A. NO, IT WASN'T.

Q. WHAT DID JUDGE HASTINGS SAY WHEN YOU ASKED HIM WHETHER HE HAD LISTED YOU AS A CHARACTER WITNESS?

JUDGE TJOFLAT: DID YOU CALL JUDGE HASTINGS OR DID HE CALL YOU?

THE WITNESS: I CAN'T REMEMBER, BUT WE HAD A CONVERSATION.

SEEMS LIKE HE SAID YES.

BY MR. WEBB:

Q. DID YOU HAVE ANY FURTHER CONVERSATIONS WITH HIM ABOUT THAT SUBJECT, WHETHER YOU WOULD BE A CHARACTER WITNESS?

A. NO.

Q. WERE YOU EVER CALLED AS A WITNESS AT THE TRIAL?

A. NO.

Q. WERE YOU SUBPOENAED?

A. NO, NOT UNTIL FOR TODAY.

Q. NOT UNTIL COMING HERE FOR TODAY'S PROCEEDINGS?

A. RIGHT. RIGHT.

Q. DID YOU EVER HAVE ANY CONVERSATION WITH JUDGE HASTINGS OR ANY OF HIS ATTORNEYS AS TO WHY YOU WERE NOT CALLED AS A WITNESS AT THE TRIAL?

A. NO. IT'S NOT A GLORIOUS THING TO BE A WITNESS.

Q. DO YOU KNOW WILLIAM BORDERS?

A. NO, I DON'T.

Q. I MAY HAVE ASKED YOU THIS, BUT JUST BEAR WITH ME. DO YOU KNOW IF HEMPHILL PRIDE HAS EVER BEEN IN YOUR OFFICE AT

THE GOVERNOR'S OFFICE, EDUCATION DIVISION?

A. NO, I DO NOT.

Q. TO YOUR KNOWLEDGE, HE'S NEVER BEEN THERE?

A. NO, TO MY KNOWLEDGE, NO.

MR. WEBB: I HAVE NOTHING FURTHER.

JUDGE TJOFLAT: MAY I ASK A QUESTION?

JUDGE GODBOLD: YES.

JUDGE TJOFLAT: MS. McIVER, CONCENTRATING ON THE JANUARY VISIT WITH JUDGE HASTINGS IN COLUMBIA WHEN YOU PICKED HIM UP AT THE AIRPORT, DID YOU AND HE WATCH THE SUPER BOWL?

THE WITNESS: YES, WE DID, HE ALONG WITH MEMBERS OF MY FAMILY.

JUDGE TJOFLAT: THAT WAS AT YOUR HOUSE?

THE WITNESS: AT MY HOUSE.

JUDGE TJOFLAT: HE ARRIVED IN COLUMBIA THEN AND THAT WAS ON A SUNDAY? DO YOU RECALL?

THE WITNESS: IT WAS ON A SUNDAY.

JUDGE TJOFLAT: HE ARRIVED THEN IN COLUMBIA SOMETIME ON SUNDAY.

THE WITNESS: SOMETIME ON SUNDAY.

JUDGE TJOFLAT: DO YOU RECALL WHEN THAT WAS THAT HE ARRIVED?

THE WITNESS: I KNOW IT WAS MORNING.

JUDGE TJOFLAT: IN THE MORNING.

THE WITNESS: BECAUSE I WAS LATE GETTING THERE.

JUDGE TJOFLAT: YOU WATCHED THE GAME AT THE HOUSE AND THEN LATER IN THE EVENING YOU TOOK HIM BACK TO THE HOTEL, THE HOLIDAY INN?

THE WITNESS: THAT'S CORRECT.

JUDGE TJOFLAT: AND THE NEXT MORNING YOU TOOK HIM TO THE LAWYER'S OFFICE.

THE WITNESS: I DID.

JUDGE TJOFLAT: DO YOU KNOW ANYONE BY THE NAME OF JACK SWERLING?

THE WITNESS: NEVER HEARD OF THE NAME.

JUDGE TJOFLAT: DID HE MENTION THE NAME OF THE LAWYER HE WAS GOING TO SEE?

THE WITNESS: NO, HE DID NOT.

JUDGE TJOFLAT: WAS IT IN THE MORNING THAT YOU TOOK HIM BY THE LAWYER'S OFFICE AND DROPPED HIM OFF THERE?

THE WITNESS: IT WAS MORNING, EN ROUTE TO WORK.

JUDGE TJOFLAT: DO YOU KNOW PATRICIA G. WILLIAMS?

THE WITNESS: NO, I DON'T.

JUDGE TJOFLAT: HAVE YOU EVER HEARD HER NAME MENTIONED?

THE WITNESS: YES, I HAVE.

JUDGE TJOFLAT: IN WHAT CONTEXT HAVE YOU HEARD HER NAME MENTIONED?

THE WITNESS: AS JUDGE HASTINGS' ATTORNEY.

JUDGE TJOFLAT: JUDGE HASTINGS' ATTORNEY MENTIONED HER

NAME?

NO. AS HER ATTORNEY?

THE WITNESS: AS HIS ATTORNEY.

JUDGE TJOFLAT: AND WHEN DID YOU LEARN THAT, THAT SHE WAS HIS ATTORNEY?

THE WITNESS: I DON'T KNOW WHEN I LEARNED IT, BUT I'M AN AVID READER, AND THIS CASE WAS HIGHLY PUBLICIZED.

JUDGE TJOFLAT: THAT IS HOW YOU THINK YOU ACQUIRED KNOWLEDGE OF HER NAME OR WHO SHE IS?

THE WITNESS: BASICALLY.

JUDGE TJOFLAT: ALL RIGHT.

WHAT WAS THE CONVERSATION AS BEST YOU RECALL IT BETWEEN YOU AND JUDGE HASTINGS WHEN YOU TALKED ABOUT WHETHER YOU HAD BEEN LISTED AS A CHARACTER WITNESS?

WELL, TO HELP YOUR RECOLLECTION, THE F.B.I. HAD BEEN BY TO SEE YOU.

THE WITNESS: NO. THEY CALLED.

JUDGE TJOFLAT: THEY CALLED.

THE WITNESS: AND I BECAME ALARMED AND CALLED JUDGE HASTINGS.

JUDGE TJOFLAT: THAT IS WHAT HAPPENED?

THE WITNESS: UH-HUH.

JUDGE TJOFLAT: AND TELL ME AS BEST YOU CAN WHAT WAS SAID BY THE TWO OF YOU WHEN YOU CALLED HIM.

THE WITNESS: THAT'S WHEN I ASKED THE QUESTION, WHETHER OR NOT HE LISTED MY NAME.

JUDGE TJOFLAT: AS A CHARACTER WITNESS?

THE WITNESS: RIGHT. AND I FELT I SHOULD HAVE BEEN INFORMED OR NOTIFIED.

JUDGE TJOFLAT: AND WHAT DID HE SAY?

THE WITNESS: I JUST CAN'T REMEMBER, BUT I DO REMEMBER HE WAS MENTIONING THAT HE HAD LISTED OTHER NAMES.

JUDGE TJOFLAT: OKAY.

THE WITNESS: BUT HE DIDN'T GO INTO DETAIL AS TO WHO THEY WERE.

JUDGE TJOFLAT: ALL RIGHT.

AFTER YOUR CONTACT WITH HIM IN COLUMBIA DURING THE SUPER BOWL WEEKEND OF 1982, IS IT YOUR TESTIMONY THAT YOU NEVER SAW HIM AGAIN FACE TO FACE?

THE WITNESS: I NEVER SAW HIM AGAIN.

JUDGE TJOFLAT: AND OTHER THAN THE TELEPHONE CONVERSATION YOU HAVE JUST TOLD US ABOUT WHEN YOU DISCUSSED THE WITNESS ISSUE, HAVE YOU HAD ANY OTHER TELEPHONE CONVERSATIONS WITH JUDGE HASTINGS?

THE WITNESS: OH, YES.

JUDGE TJOFLAT: WHEN WAS THE NEXT ONE AFTER THAT?

THE WITNESS: I DON'T KNOW WHEN THE NEXT ONE AFTER THAT, BUT I HAVE SPOKEN WITH HIM AS RECENTLY AS JUNE OF '85.

JUDGE TJOFLAT: BETWEEN THE SUPER BOWL WEEKEND VISIT IN COLUMBIA AND THE TELEPHONE CONVERSATION THAT YOU HAD WITH

HIM DURING HIS TRIAL ABOUT THE WITNESS SITUATION, DID YOU HAVE ANY TELEPHONE CONVERSATIONS?

THE WITNESS: THAT'S DIFFICULT TO ANSWER.

JUDGE TJOFLAT: WELL, HE WAS TRIED IN 1983, AND YOU VISITED WITH HIM IN JANUARY OF 1982. THAT WAS A LITTLE OVER A YEAR INTERVENING.

THE WITNESS: OKAY.

JUDGE TJOFLAT: DID YOU TALK TO HIM OVER THE TELEPHONE DURING THAT YEAR THAT YOU CAN RECALL?

THE WITNESS: I CAN'T RECALL TALKING WITH HIM. IF SO, I JUST CAN'T RECALL. I DON'T KNOW.

JUDGE TJOFLAT: WHEN WAS THE FIRST TIME AFTER HIS TRIAL IN 1983 THAT YOU TALKED WITH HIM OVER THE TELEPHONE?

THE WITNESS: OKAY, WHEN WAS THE TRIAL OVER?

JUDGE TJOFLAT: MR. DOAR, CAN YOU INFORM US AS TO WHEN THE TRIAL WAS OVER?

MR. WEBB: FEBRUARY OF '83.

JUDGE TJOFLAT: FEBRUARY 1983.

THE WITNESS: I DON'T RECALL HAVING A CONVERSATION WITH HIM.

JUDGE TJOFLAT: AFTER THE TRIAL?

THE WITNESS: NO. NOT IMMEDIATELY AFTER ANYWAY.

JUDGE TJOFLAT: WELL, YOU DID HAVE A CONVERSATION OVER TWO YEARS LATER IN JUNE OF THIS YEAR.

THE WITNESS: I ACKNOWLEDGED THAT, YES.

JUDGE TJOFLAT: DID YOU HAVE ANY IN BETWEEN THE TRIAL AND THIS LAST JUNE?

THE WITNESS: I JUST CAN'T RECALL.

JUDGE TJOFLAT: YOU DON'T HAVE A MEMORY OF ANY OTHER THAN THE JUNE CALL?

THE WITNESS: THAT WAS THE MOST RECENT, RIGHT.

JUDGE TJOFLAT: THAT IS THE ONE YOU RECALL, THAT YOU HAVE A MEMORY OF?

THE WITNESS: RIGHT.

JUDGE TJOFLAT: IS IT YOUR TESTIMONY YOU HAVE NO PRESENT MEMORY OF ANY OTHER TELEPHONE CONVERSATION SINCE HE WAS ACQUITTED?

THE WITNESS: YES.

JUDGE TJOFLAT: TELL US WHO CALLED WHOM IN JUNE 1985.

THE WITNESS: I CALLED HIM.

JUDGE TJOFLAT: AND WHAT WAS THE CONVERSATION?

THE WITNESS: I NEEDED SOME LEGAL ADVICE.

JUDGE TJOFLAT: WAS THERE ANYTHING SAID DURING THAT TELEPHONE CONVERSATION WITH RESPECT TO ANY DIFFICULTIES HE MAY HAVE HAD WITH THE GOVERNMENT?

THE WITNESS: NO. THE ENTIRE CONVERSATION WAS CENTERED ON ME. I PLACED THE CALL.

JUDGE TJOFLAT: AND YOU TALKED TO HIM WHERE?

THE WITNESS: IN MIAMI. AS A MATTER OF FACT, HE WAS IN CONFERENCE AND RETURNED MY CALL.

JUDGE TJOFLAT: YOU CALLED HIM AT THE COURTHOUSE?

THE WITNESS: YES.

JUDGE TJOFLAT: AND DO YOU REMEMBER WHERE YOU CALLED HIM FROM?

THE WITNESS: FROM THE OFFICE.

JUDGE TJOFLAT: OKAY.

JUDGE GODBOLD: IN THE JUNE '85 CONVERSATION, WAS THE LEGAL ADVICE YOU WERE SEEKING PERSONAL IN NATURE?

THE WITNESS: I CAN DISCUSS IT. IT'S NOT THAT PERSONAL.

JUDGE GODBOLD: ALL RIGHT. WHAT WAS IT ABOUT?

THE WITNESS: I WAS GETTING READY TO GO TO NEW YORK TO ATTEND THE AMERICAN ACADEMY OF THE DRAMATIC ARTS, AND THIS WAS A NEW EXPERIENCE FOR ME, ATTENDING ACTING SCHOOL, AND PLUS I WAS INTERESTED IN AUDITIONING FOR ANY THEATRICAL ROLES THAT MAY APPEAR, AND I NEEDED TO FIND OUT WHETHER IT WOULD BE PREMATURE FOR ME TO GET A LAWYER OR TRY TO OBTAIN A MANAGER AT THIS TIME OR WAIT UNTIL I GET TO NEW YORK TO SECURE THESE TYPE SERVICES.

JUDGE GODBOLD: DID JUDGE HASTINGS EVER ASK YOU TO SOLICIT OR RAISE MONEY ON HIS BEHALF FOR HIS DEFENSE?

THE WITNESS: I DON'T RECALL HIM ASKING ME TO RAISE MONEY.

JUDGE GODBOLD: WELL, DID ANYBODY ASK YOU TO RAISE MONEY FOR HIS DEFENSE?

THE WITNESS: NO, BECAUSE I NEVER DISCUSSED IT WITH ANYBODY.

JUDGE GODBOLD: THEN HOW DID YOU COME TO SEND THE CHECK FOR $300? WHAT CAUSED YOU TO OR TRIGGERED YOU TO SEND THE CHECK?

THE WITNESS: WELL, I'M ALWAYS CONTRIBUTING TO MOST CAUSES, AND I'M NOT TRULY CONVINCED THAT WE HAVE A FAIR SYSTEM, SO I FELT MY CONTRIBUTION WOULD ASSIST AND IN THE FINAL ANALYSIS DETERMINE INNOCENCE OR GUILT, BUT IN TURN HOPING SOMEONE WOULD DO THE SAME FOR ME.

JUDGE GODBOLD: WELL, WHAT I AM TRYING TO SEEK FROM YOU IS HOW YOU KNEW THAT FUNDS WERE DESIRED.

THE WITNESS: READING. IT WAS HIGHLY PUBLICIZED THROUGH THE MIAMI TIMES, OTHER MEDIA AVENUES.

JUDGE TJOFLAT: READING I TAKE IT NEWSPAPER ACCOUNTS THAT CONTRIBUTIONS WERE BEING MADE?

THE WITNESS: WOULD YOU REPEAT THAT, SIR?

JUDGE GODBOLD: WELL, YOU SAY YOU DETERMINED IT FROM READING AND FROM PUBLICITY. READING OR PUBLICITY ABOUT WHAT? ABOUT THE FACT THAT HE HAD BEEN INDICTED OR ABOUT THE FACT THAT CONTRIBUTIONS WERE BEING MADE?

SOMETHING --

THE WITNESS: THE FACT THAT CONTRIBUTIONS WERE BEING MADE.

JUDGE GODBOLD: ALL RIGHT. I UNDERSTAND YOU.

THE WITNESS: YEAH.

JUDGE GODBOLD: ANY FURTHER QUESTIONS?

DID PATRICIA WILLIAMS, JUDGE HASTINGS' ATTORNEY, EVER COMMUNICATE WITH YOU?

THE WITNESS: I DON'T KNOW THE YOUNG LADY. I HAVE NEVER SEEN HER OR SPOKEN WITH HER.

JUDGE GODBOLD: ANY FURTHER QUESTIONS FROM COMMITTEE MEMBERS?

ANY FURTHER QUESTIONS, MR. WEBB?

MR. WEBB: IF I COULD.

BY MR. WEBB:

Q. MS. McIVER, LET ME SHOW YOU WHAT'S PREVIOUSLY BEEN MARKED AS IC EXHIBIT 66 AND ALSO WAS MARKED AT THE TRIAL AS DEFENDANT'S EXHIBIT 51, TELEPHONE RECORDS OF JUDGE HASTINGS' CHAMBERS.

I ASKED YOU ABOUT SOME CONVERSATIONS, WHETHER YOU RECALLED ANYTHING IN MAY AND SEPTEMBER OF 1981. LET ME DRAW YOUR ATTENTION TO THE PAGE WITH THE NUMBER OF IC EXHIBIT 66 WITH THE NUMBER 9879, AND YOU SEE A CALL ON SEPTEMBER 2ND TO COLUMBIA FOR FIVE MINUTES, AND IF YOU LOOK CLOSELY YOU CAN MAKE OUT THE NUMBER 758-8825.

DOES THAT HELP YOU IN TERMS OF RECALLING --

A. YOU SEE, THE DATES DON'T MEAN ANYTHING TO ME.

Q. I JUST THOUGHT MAYBE IF I SHOWED YOU THE RECORD.

SIMILARLY, ON THE PAGE ON THE EXHIBIT WITH THE NUMBER

9880 YOU SEE A PHONE CALL MAY 5TH TO COLUMBIA, AGAIN THE 758-8825 NUMBER.

DOES THAT HELP YOU AT ALL IN TERMS OF REMEMBERING THE CONVERSATIONS?

A. BECAUSE WE TALKED ABOUT FRIVOLOUS THINGS.

MR. WEBB: I HAVE NOTHING FURTHER.

JUDGE GODBOLD: I HAVE NO FURTHER QUESTIONS.

YOU MAY STEP DOWN, MS. McIVER.

THE WITNESS: THANK YOU.

JUDGE GODBOLD: MR. DOAR, CAN THIS WITNESS BE RELEASED?

MR. DOAR: YES, SIR.

JUDGE GODBOLD: YOU ARE FREE TO GO, MS. McIVER.

THE WITNESS: THANK YOU.

MR. WEBB: THE NEXT WITNESS IS JAMES VICKERS.

THE CLERK: JAMES VICKERS, COME TO THE COURTROOM, PLEASE.

JUDGE GODBOLD: MR. DOAR, WOULD YOU APPROACH THE BENCH A MINUTE?

HOLD THE DOOR THERE JUST A MINUTE, PLEASE, SIR.

(THEREUPON, A DISCUSSION WAS HAD AT THE BENCH, OUT OF THE HEARING OF THE COURT REPORTER.)

- - -

JUDGE GODBOLD: WELL, LET'S ADJOURN AND SUPPOSE WE COME BACK AT 1:00 O'CLOCK.

MR. DOAR: THAT WILL BE FINE.

JUDGE GODBOLD: THE PROCEEDINGS ARE IN RECESS UNTIL 1:00 O'CLOCK.

(THEREUPON, THE PROCEEDINGS WERE RECESSED AT 11:55 O'CLOCK A.M., AND THEN RESUMED AS FOLLOWS.)

- - -

JUDGE GODBOLD: MR. DOAR, YOU MAY PROCEED.

MR. DOAR: COULD I CALL MR. WHITE BACK, PLEASE?

THE CLERK: MR. WHITE, COME BACK TO THE COURTROOM, PLEASE.

MR. WHITE, YOU ARE STILL UNDER OATH.

YOU MAY BE SEATED.

- - -

JOHN LARRY WHITE,

RECALLED AS A WITNESS, BEING PREVIOUSLY SWORN, TESTIFIED FURTHER AS FOLLOWS:

FURTHER DIRECT EXAMINATION

BY MR. DOAR:

Q. MR. WHITE, I WOULD LIKE TO ASK YOU, IF YOU WOULD, TO IDENTIFY SEVERAL DOCUMENTS THAT WERE CONTAINED IN YOUR FILE WHICH IS THE OFFICIAL FILE OF YOUR OFFICE WITH RESPECT TO HEMPHILL PRIDE. IS THAT CORRECT?

A. YES, IT IS.

Q. AND CALLING YOUR ATTENTION TO THE DOCUMENTS THAT ARE

Mr. **Bryant**. The second witness whose prior testimony the House is submitting at this time is Andrew Chisholm. Dr. Chisholm testified before the Investigating Committee that he resides in Columbia, South Carolina, and that he has been a professor at the University of South Carolina for approximately 13 years. He further testified that in 1981 Dr. Chisholm held the position of assistant to the president for minority affairs at the University of South Carolina. He testified that in July 1981 the telephone numbers of his University of South Carolina office were 777-7716 and 777-7717.

Dr. Chisholm further testified that he knows Attorney Hemphill Pride. When asked whether Hemphill Pride had access to his office telephone numbers in the summer of 1981, Dr. Chisholm testified, "Absolutely and definitely not." Dr. Chisholm was then asked, "There wouldn't be any way that you would have received a call at your office during 1981?" And in response, Dr. Chisholm testified, "No way under any circumstances would he have received a call."

RECORDS OF PROCEEDINGS RELATED TO INVESTIGATIONS CONDUCTED UNDER THIS SUBSECTION," AND THIS IS SUCH AN INVESTIGATION," SHALL BE CONFIDENTIAL AND SHALL NOT BE DISCLOSED BY ANY PERSON IN ANY PROCEEDING.

THE WITNESS: YES, SIR.

JUDGE GODBOLD: MR. DOAR.

- - -

ANDREW JAMES CHISHOLM,

CALLED AS A WITNESS, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. DOAR:

Q. DR. CHISHOLM, WHERE DO YOU LIVE?

A. I LIVE IN COLUMBIA, SOUTH CAROLINA.

Q. WHAT IS YOUR OCCUPATION?

A. I'M A PROFESSOR OF CRIMINOLOGY AT THE UNIVERSITY OF SOUTH CAROLINA.

Q. HOW LONG HAVE YOU BEEN A PROFESSOR AT THE UNIVERSITY OF SOUTH CAROLINA?

A. APPROXIMATELY 13 YEARS.

Q. COULD YOU GIVE THE COMMITTEE JUST A BRIEF RESUME OF YOUR EDUCATIONAL BACKGROUND?

A. YES, SIR.

I GRADUATED FROM THE UNIVERSITY OF MARYLAND IN COLLEGE PARK, MARYLAND IN 1969 WITH AN UNDERGRADUATE DEGREE IN

CRIMINOLOGY.

IN 1971, I ATTENDED THE UNIVERSITY OF GEORGIA WHERE I COMPLETED A MASTER'S IN REHABILITATION COUNSELING, CRIMINOLOGY, IN LATE 1971.

I RETURNED IN 1972 TO PURSUE A DOCTORATE IN CORRECTIONAL REHABILITATION AND CRIMINOLOGY AND COMPLETED THAT DEGREE.

JUDGE TJOFLAT: RETURNED TO WHERE?

THE WITNESS: THE UNIVERSITY OF GEORGIA. WHERE I COMPLETED THAT DEGREE IN EARLY 1975.

BY MR. DOAR:

Q. WHERE DID YOU GROW UP?

A. I GREW UP IN AUGUSTA, GEORGIA.

Q. AND HAVE YOU LIVED AT COLUMBIA SINCE 1975?

A. GRADUATING IN 1969 FROM THE UNIVERSITY OF MARYLAND, I RETURNED TO SOUTH CAROLINA IMMEDIATELY, AND ALL MY PROFESSIONAL LIFE, I WILL PUT IT THAT WAY, WITH THE EXCEPTION OF THE YEARS I WAS AT GEORGIA, I HAVE LIVED AND WORKED IN SOUTH CAROLINA.

Q. NOW, FOLLOWING YOUR OBTAINING YOUR DOCTORATE DEGREE AT GEORGIA, WHAT WORK WERE YOU ENGAGED?

A. PRIOR TO --

Q. SUBSEQUENT TO 1975.

A. I WAS A JUVENILE PLACEMENT OFFICER FOR THE STATE OF SOUTH CAROLINA FROM 1969 THROUGH ABOUT 1970, AND THEN I

DIRECTED AN URBAN LEAGUE PROGRAM IN GREENVILLE, SOUTH CAROLINA FROM 1970 UNTIL I LEFT TO PURSUE MY MASTER'S AT THE UNIVERSITY OF GEORGIA IN 1971.

WHILE PURSUING MY MASTER'S, THEN GOVERNOR JIMMY CARTER APPOINTED ME AS A PROBATION SUPERVISOR FOR THE STATE OF GEORGIA, AT WHICH TIME I, WHEN I COMPLETED MY MASTER'S, I RETURNED BACK TO SOUTH CAROLINA AND WAS IMMEDIATELY APPOINTED BY GOVERNOR JOHN WEST TO DIRECT THE STATE'S CORRECTIONAL MASTER PLAN STUDY.

I LEFT THAT POSITION IN 1972 TO RETURN BACK TO THE UNIVERSITY OF GEORGIA.

WHILE I WAS PURSUING MY DOCTORATE, I ALSO TAUGHT IN THE DOCTORATE AND MASTER PROGRAM AT THE UNIVERSITY OF GEORGIA, STUDENTS WHO WERE PURSUING DEGREES IN CRIMINOLOGY.

Q. SUBSEQUENT TO 1975, WHERE DID YOU WORK?

A. SO THE UNIVERSITY OF GEORGIA, AND THEN -- EXCUSE ME. IN LATE 1974, I RETURNED BACK TO THE UNIVERSITY OF SOUTH CAROLINA WHERE I BEGAN MY PROFESSORSHIP IN THE SCHOOL OF CRIMINAL JUSTICE.

SO UP FROM 1969 THROUGH '75 I THINK CHRONOLOGICALLY THAT TAKES CARE OF MY EMPLOYMENT.

Q. NOW, AFTER 1975 -- SUBSEQUENT TO 1975 --

A. EXCUSE ME. WELL, SUBSEQUENT THOSE WERE THE POSITIONS THAT I HELD.

OF COURSE, THE SHORT STINT UP UNTIL '75 AT THE

UNIVERSITY OF SOUTH CAROLINA. PRIOR TO THAT, THE PROFESSORSHIP AT THE UNIVERSITY OF GEORGIA, AND THEN THE OFFICE OF THE GOVERNOR IN SOUTH CAROLINA, AND THEN THE OFFICE OF THE GOVERNOR HERE IN GEORGIA.

Q. NOW, GOING FORWARD FROM 1975 TO THE PRESENT TIME, WHAT HAS BEEN YOUR WORK?

A. UP THROUGH 1976, I WAS A PROFESSOR AT THE UNIVERSITY OF SOUTH CAROLINA.

BEGINNING IN 1976, I ASSUMED THE POSITION AS DIRECTOR OF MINORITY AFFAIRS FOR THE CARTER PRESIDENTIAL CAMPAIGN.

IN 1977, I TOOK A SABBATICAL FROM THE UNIVERSITY OF GEORGIA TO ACCEPT THE POSITION AS UNITED STATES MARSHAL FOR THE STATE OF SOUTH CAROLINA.

I REMAINED IN THAT POSITION THROUGH THE LATTER PART OF 1979, AT WHICH TIME I RESIGNED THAT APPOINTMENT TO ACCEPT THE POSITION AS ASSISTANT TO THE PRESIDENT AT THE UNIVERSITY OF SOUTH CAROLINA THROUGH 1981, AT WHICH TIME I RESIGNED THAT POSITION TO GO BACK INTO THE CLASSROOM AS A FULL PROFESSOR IN THE SCHOOL OF CRIMINAL JUSTICE WHERE I'M PRESENTLY WORKING.

Q. NOW, IN THE YEAR 1981, DID YOU HAVE OFFICES AT THE UNIVERSITY OF SOUTH CAROLINA?

A. I DID.

Q. AND WHAT PROGRAM WERE YOU RUNNING DURING 1981?

A. I WAS ASSISTANT TO THE PRESIDENT SPECIFICALLY FOR MINORITY AFFAIRS.

Q. AND WAS THAT DURING THE ENTIRE PERIOD OF 1981?

A. IN THE LATTER PART OF '81, I RESIGNED THE POSITION TO ACCEPT THE POSITION AS FULL PROFESSOR IN THE SCHOOL OF CRIMINAL JUSTICE.

Q. NOW, DID YOU HAVE A SPECIFIC OFFICE ON THE UNIVERSITY CAMPUS IN THE SUMMER OF 1981?

A. YES, SIR, I DID.

Q. SPECIFICALLY IN JULY?

A. YES, SIR.

Q. DO YOU REMEMBER WHAT YOUR TELEPHONE NUMBER WAS AT THAT OFFICE?

A. I DO.

Q. WHAT WAS IT?

A. 777-7716.

Q. AND WAS THERE ALSO ANOTHER PHONE THERE 777-7717?

A. YES, SIR. IT WAS ROTARY.

Q. ROTARY.

TWO NUMBERS?

A. YES, SIR.

Q. AND HOW MANY EMPLOYEES WERE IN THAT OFFICE?

A. TWO FULL TIME OTHER THAN MYSELF AND TWO GRADUATE ASSISTANTS AND SEVERAL WORK STUDY STUDENTS.

Q. NOW, IN THE SUMMER OF 1981 DID YOU KNOW WILLIAM BORDERS?

A. YES, SIR. NOT ONLY THAT YEAR BUT YEARS PRECEDING '81.

Q. THE COMMITTEE HAS INFORMATION BEFORE IT THAT ON JULY 24TH, 1981, A TELEPHONE CALL WAS PLACED FROM MR. BORDERS' LAW OFFICE TO A TELEPHONE IN COLUMBIA 803-777-7716 AND THAT THE CONVERSATION LASTED FOR FIVE MINUTES AND IT WAS PLACED AT SOMETHING AROUND 1:53 IN THE AFTERNOON.

WOULD YOU HAVE ANY RECOLLECTION OF THAT CALL AT THIS SPECIFIC TIME?

A. YES, SIR. DURING THAT PERIOD OF TIME, MR. BORDERS WAS VERY INTERESTED IN REPRESENTING BLACK ATHLETES WHO WERE PLAYING FOOTBALL FOR THE UNIVERSITY OF SOUTH CAROLINA WHO HAD DISTINGUISHED THEMSELVES, AND HE WANTED TO CONSUMMATE A RELATIONSHIP IN TERMS OF MEETING THESE ATHLETES AND GETTING TO KNOW THEM AS PERHAPS POTENTIAL CLIENTS THAT HE COULD REPRESENT AT SOME POINT IN TIME.

IT WAS DURING THAT PERIOD OF TIME IN WHICH WE HAD ONE ALL-AMERICAN TIGHT END AT THE UNIVERSITY, WILLIE SCOTT, TO BE SPECIFIC, WHO IS NOW PLAYING FOR THE KANSAS CITY CHIEFS, IN WHICH MR. BORDERS WAS CALLING TO ARRANGE A MEETING TO MEET THIS ATHLETE AND TO JUST GET TO KNOW HIM. SO THAT PARTICULAR CONVERSATION WAS RELEGATED TO THAT ACTIVITY.

Q. NOW, HAD YOU HAD OTHER CONVERSATIONS WITH MR. BORDERS PRIOR THERETO?

A. MANY.

Q. IN 1981?

A. MANY CONVERSATIONS.

Q. IN LOOKING THROUGH MR. BORDERS' OFFICE TELEPHONE NUMBERS FOR SEVERAL MONTHS AROUND JULY AND BOTH PRECEDING JULY AND SUBSEQUENT TO JULY, IT DOESN'T APPEAR THERE WERE ANY OTHER CALLS TO 777-7716.

DO YOU HAVE ANY EXPLANATION FOR THAT IN VIEW OF THE FACT YOU SAY YOU HAD A NUMBER OF CALLS FROM HIM?

A. YES, SIR.

Q. WHAT IS YOUR EXPLANATION?

A. WELL, BY MANY CONVERSATIONS, NOT ONLY WERE TELEPHONIC BUT ALSO INTERPERSONAL NATURE.

MR. BORDERS HAD A SYNDROME IN WHICH --

Q. A SYNDROME?

A. YES, SIR.

Q. YES.

A. IN WHICH HE VERY SELDOM UTILIZED HIS PERSONAL TELEPHONE OR HIS HOME PHONE, PERSONAL OFFICE PHONE OR HIS HOME PHONE, TO MAKE TELEPHONE CALLS.

HIS FEELING WAS THAT HE WOULD NOT BE AT LIBERTY TO DISCUSS WHATEVER THAT IS HE NEEDED TO DISCUSS OPENLY, SO HE MADE MANY OF HIS PHONE CALLS BY PUBLIC TELEPHONES ON THE STREET.

Q. NOW, WHEN DID YOU FIRST MEET MR. BORDERS?

A. I MET MR. BORDERS DURING THE PRESIDENTIAL CAMPAIGN OF 1976 WHEN I SERVED AS DIRECTOR OF MINORITY AFFAIRS FOR THE CARTER PRESIDENTIAL CAMPAIGN.

MR. BORDERS WAS INTRODUCED TO ME THROUGH A GENTLEMAN NAMED BEN BROWN, AN ATTORNEY OUT OF ATLANTA, WHO WAS A DEPUTY CAMPAIGN MANAGER FOR THE CARTER PRESIDENTIAL CAMPAIGN.

MY RELATIONSHIP STEMMED DURING THAT PERIOD OF TIME PRIMARILY THROUGH POLITICAL ACTIVITIES ACROSS THE COUNTRY.

MR. BORDERS SUCCESSFULLY EMERGED DURING THIS PERIOD OF TIME AS ONE OF THE STRONG POLITICAL ADVISORS TO THE PRESIDENTIAL CAMPAIGN, AND EVENTUALLY HE SERVED AS ONE OF THE DISTINGUISHED POSITIONS ON THE FINANCE COMMITTEE FOR THE CARTER PRESIDENTIAL CAMPAIGN.

Q. AND WOULD HE HAVE MATTERS RELATING TO POLITICS THAT TOOK HIM TO SOUTH CAROLINA ON OCCASION?

A. ON OCCASIONS -- AGAIN, I OPERATED OUT OF THE NATIONAL OFFICE HERE IN ATLANTA, SO I'M NOT VERY FAMILIAR THAT IF HE ACTUALLY, EVEN THOUGH I'M FROM SOUTH CAROLINA, IF HE ACTUALLY MADE SOME VISITS TO SOUTH CAROLINA.

I WOULD ASSUME THAT HE DID, BECAUSE HE HAD AN EXCELLENT RELATIONSHIP WITH ATTORNEY HEMPHILL PRIDE WHO WAS VERY ACTIVE IN THE CARTER CAMPAIGN FROM SOUTH CAROLINA, AND MR. BORDERS MADE CONSIDERABLE TRIPS AND VISITS ON BEHALF OF THE CAMPAIGN, SO I WOULD ASSUME THAT HE DID.

Q. DURING THAT TIME, DID YOU KNOW A FEDERAL JUDGE ALCEE L. HASTINGS?

A. I WAS FAMILIAR WITH JUDGE HASTINGS PRIMARILY THROUGH THE HEMPHILL PRIDE RELATIONSHIP AND BILL BORDERS.

IN 1975 OR '76, I WAS ON THE BOARD OF NOVA UNIVERSITY, WHICH IS OUT OF FORT LAUDERDALE, FLORIDA, AND ASSISTED THEM IN CREATING A CRIMINAL JUSTICE PROGRAM THERE.

UPON LEARNING THAT I WAS VISITING FORT LAUDERDALE, ATTORNEY FRIDE SUGGESTED ON MANY OCCASIONS THAT I SHOULD GET IN CONTACT WITH MR. HASTINGS WHO WAS A PRACTICING ATTORNEY THEN FOR WHATEVER NEEDS I PERHAPS WOULD HAVE HAD IN FORT LAUDERDALE.

I DID NOT MEET HIM DURING THAT PERIOD OF TIME, BUT I DID TALK WITH HIM ONCE OVER THE TELEPHONE WHEN I VISITED NOVA UNIVERSITY, BUT WE NEVER DID DEVELOP A RELATIONSHIP.

Q. NOW, SUBSEQUENTLY, WHILE YOU WERE UNITED STATES MARSHAL, DID YOU HAVE ANY CONTACT WITH JUDGE HASTINGS?

A. AGAIN, COMING OUT OF THE PRESIDENTIAL CAMPAIGN, I HAD SEVERAL TELEPHONE CONVERSATIONS WITH JUDGE HASTINGS PRIOR TO MY APPOINTMENT AS U.S. MARSHAL BUT NO PERSONAL VISIBLE RELATIONSHIPS.

Q. NOW, DO YOU RECALL WHETHER OR NOT YOU HAD ANY TELEPHONE CONVERSATIONS WITH JUDGE HASTINGS IN THE YEARS 1980 OR '81?

A. IN 1981, I DID.

Q. COULD YOU TELL THE COMMITTEE ABOUT THAT?

A. IN 1974, I FOUNDED A NATIONAL ORGANIZATION AT THE UNIVERSITY OF ALABAMA IN TUSCALOOSA. THE ORGANIZATION IS TITLED THE NATIONAL ASSOCIATION OF BLACKS IN CRIMINAL

JUSTICE.

WE WERE HAVING A NATIONAL CONFERENCE HERE IN ATLANTA AS A RESULT OF THE WORK OF THAT ORGANIZATION, AND JUDGE HASTINGS WAS INVITED TO BE ONE OF THE PRINCIPAL SPEAKERS.

JUDGE TJOFLAT: WHEN WAS THAT?

THE WITNESS: IN 1981. I BELIEVE THAT'S CORRECT.

HE WAS INVITED TO BE ONE OF THE PRINCIPAL SPEAKERS DURING THIS CONFERENCE, AND I WAS ASKED AS A MEMBER OF THE CONFERENCE PLANNING COMMITTEE IF I WOULD GET IN CONTACT WITH HIM DIRECTLY TO ACTUALIZE HIS PARTICIPATION.

AT WHICH TIME I SPOKE WITH HIM OVER THE TELEPHONE TO CONSUMMATE HIS APPEARANCE AT THE CONFERENCE AND TO BE ONE OF THE PRINCIPAL SPEAKERS.

BY MR. DOAR:

Q. YOU HAVE MENTIONED YOU KNOW HEMPHILL PRIDE.

A. YES, SIR.

Q. HOW DID YOU KNOW HIM?

A. WELL, ATTORNEY PRIDE WAS A VERY ACTIVE PRACTICING ATTORNEY IN COLUMBIA AND HAD A VERY NOTED REPUTATION.

WHEN I FIRST MET HIM, IT WAS UPON PUBLIC NOTIFICATION THAT I WAS BEING NOMINATED AS U.S. MARSHAL FOR SOUTH CAROLINA.

HE CALLED ME AND REQUESTED THAT I APPROVE HIS PARTICIPATION IN ORGANIZING A BANQUET DINNER RECOGNIZING MY NOMINATION AS U.S. MARSHAL SINCE I WAS THE FIRST BLACK

MARSHAL TO BE NOMINATED, FIRST BLACK PERSON TO BE NOMINATED FOR U.S. MARSHAL IN THE SOUTH SINCE RECONSTRUCTION, AND THAT HE WOULD SERVE AS CHAIRMAN OF THIS BANQUET THAT WAS BEING PLANNED, AND FROM THAT WE DEVELOPED A CLOSE RELATIONSHIP.

Q. WERE YOU UNITED STATES MARSHAL WHEN HE WAS PROSECUTED FOR A FEDERAL CRIME?

A. REGRETFULLY, YES, SIR.

Q. AND DID THAT HAVE ANY EFFECT ON YOUR RELATIONSHIP WITH MR. PRIDE?

A. THAT'S WHY I USED THE WORD REGRETFUL, BECAUSE IT HAD A RATHER DETRIMENTAL EFFECT ON OUR RELATIONSHIP.

APPARENTLY, MR. PRIDE TOOK THE POSITION THAT I COULD HAVE DONE SOMETHING TO PREVENT HIS BEING PROSECUTED IN THE FEDERAL COURTS WHICH OF COURSE IT'S LUDICROUS, BUT THE FEEDBACK THAT I WAS RECEIVING FROM MANY, MANY PEOPLE IN COLUMBIA AND ORGANIZATIONS WAS THAT I WAS THE REASON MR. PRIDE HAD TO GO THROUGH THE SITUATION IN THE FEDERAL COURT THAT HE DID AND IN FACT THAT I COULD HAVE DONE SOMETHING TO PREVENT IT.

IT GOT TO THE POINT THAT I HAD TO GO TO THE FEDERAL JUDGE WHO WAS PROSECUTING THAT CASE AND DISCLOSE TO HIM MY FRUSTRATIONS AS RELATED TO THE FEEDBACK THAT I WAS RECEIVING FROM THE PUBLIC.

JUDGE TJOFLAT: WAS THAT JUDGE CHAPMAN?

THE WITNESS: JUDGE CHAPMAN, YES, SIR, WHO IS NOW ON

THE FOURTH CIRCUIT COURT OF APPEALS.

BY MR. DOAR:

Q. LET ME ASK YOU THIS. DID HEMPHILL PRIDE HAVE ANY ACCESS TO TELEPHONE NUMBER 777-7716 OR 7717 IN THE SUMMER OF 1981?

A. ABSOLUTELY AND DEFINITIVELY NOT.

Q. THERE WOULDN'T BE ANY WAY THAT HE WOULD HAVE RECEIVED A CALL AT YOUR OFFICE DURING 1981?

A. NO WAY UNDER ANY CIRCUMSTANCES WOULD HE HAVE RECEIVED A CALL.

Q. NOW, DO YOU KNOW A PERSON, DR. CAROL McIVER?

A. YES, SIR, I DO.

Q. COULD YOU TELL THE COMMITTEE WHO SHE IS?

A. DR. McIVER PRESENTLY WORKS OUT OF THE GOVERNOR'S OFFICE IN SOUTH CAROLINA AS AN EDUCATIONAL SPECIALIST.

I FIRST MET HER WHEN SHE CAME TO SOUTH CAROLINA SEEKING EMPLOYMENT, AND THROUGH A NUMBER OF CONVERSATIONS THAT I HAD WITH HER, A RELATIONSHIP KIND OF DEVELOPED FROM THERE.

Q. DO YOU KNOW IF SHE HAS AN ACQUAINTANCESHIP WITH HEMPHILL PRIDE?

A. NO, SIR, I COULD NOT SPEAK TO THAT.

Q. WHAT ABOUT WITH JUDGE HASTINGS?

A. I COULD NOT SPEAK TO THAT.

Q. OR BILL BORDERS?

A. I COULD NOT SPEAK TO THAT.

Q. NOW, IS IT NOT TRUE THAT YOU ARE AWARE OF THE INDICTMENT THAT THE UNITED STATES GOVERNMENT BROUGHT AGAINST WILLIAM BORDERS AND JUDGE HASTINGS FOR CONSPIRACY TO COMMIT A BRIBE?

A. YES, SIR. I'M FAMILIAR WITH THAT.

Q. AND SINCE THAT CASE WAS HEARD, HAVE YOU HAD ANY COMMUNICATIONS WITH BILL BORDERS?

A. YES, SIR, ON A COUPLE OF OCCASIONS. ONCE WHEN I WAS IN WASHINGTON, D. C., AS FATE WOULD HAVE IT, I WAS HAVING LUNCH AND HE ENTERED A RESTAURANT, HE ENTERED THE RESTAURANT WHERE I WAS HAVING LUNCH.

JUDGE TJOFLAT: THIS IS AFTER HE WAS CONVICTED?

THE WITNESS: YES, SIR.

WE HAD A CONVERSATION ABOUT, A VERY BRIEF CONVERSATION. HE WAS VERY BITTER AND VERY DISPELLED AS FAR AS WHAT WAS GOING ON, AND I WOULD IMAGINE THAT WE ONLY ENGAGED IN ABOUT 15 MINUTES OF ACTUAL CONVERSATION BECAUSE I SAW THAT IT WAS RATHER DEPRESSIVE FROM HIS STANDPOINT OR DEPRESSING FROM HIS STANDPOINT.

BY MR. DOAR:

Q. WHAT, IF ANYTHING, DID HE SAY ABOUT HIS CASE?

A. WELL, HE WAS VERY, VERY UPSET WITH ATTORNEY PRIDE. HE FELT THAT ATTORNEY PRIDE HAD DONE HIM IN, QUOTE, DONE HIM IN, UNQUOTE, BECAUSE HE TESTIFIED AGAINST HIM DURING THE CASE.

HE FELT THAT HE WAS ONLY TRYING TO BETTER HIS LOT SINCE HE WAS DISBARRED AS A RESULT OF HIS CONVICTION IN THE FEDERAL COURT AND THAT HE WAS TRYING TO BETTER HIS LOT TO SECURE HIS LICENSE TO PRACTICE.

Q. IS THAT THE EXTENT OF YOUR RECOLLECTION OF THAT CONVERSATION AS IT RELATED TO MR. BORDERS' CONVICTION?

A. YES, SIR.

Q. NOW, HAVE YOU SINCE THE TRIAL OF MR. BORDERS HAD ANY CONVERSATIONS WITH JUDGE ALCEE HASTINGS?

A. NO, SIR.

Q. SO THAT YOU ARE NOT AWARE OF WHETHER OR NOT JUDGE HASTINGS MADE ANY TRIPS INTO SOUTH CAROLINA FOLLOWING THE TIME HE WAS INDICTED FOR ANY PURPOSE?

A. NO, SIR. OF COURSE, I'M A CRIMINOLOGIST, AND I HAVE BEEN IN THIS PROFESSION FOR OVER 20 YEARS, AND I'M VERY SENSITIVE TO THESE KINDS OF MATTERS, AND I JUST NEVER MADE ANY EXPLORATION, MYSELF, PERSONALLY TO FIND OUT HOW THAT RELATIONSHIP WAS GOING.

MR. DOAR: IF YOUR HONOR PLEASE, THERE ARE SEVERAL OTHER SUBJECTS I WOULD LIKE TO QUESTION THIS WITNESS ABOUT, BUT BECAUSE OF A SCHEDULING CONFLICT DR. CHISHOLM HAS, I WOULD LIKE TO ASK THAT HE BE PERMITTED TO BE EXCUSED SUBJECT TO RECALL AT A DATE THAT'S SATISFACTORY TO THE COMMITTEE.

JUDGE GODBOLD: ALL RIGHT. THAT IS SATISFACTORY.

MR. DOAR: DR. CHISHOLM, YOU HAVE BEEN SUBPOENAED

TODAY, AND ALTHOUGH WE WILL GIVE YOU ADVANCE NOTICE FOR THE PURPOSE OF THE RECORD, DID YOU UNDERSTAND YOU ARE STILL UNDER SUBPOENA?

THE WITNESS: YES, SIR, I DO.

JUDGE GODBOLD: ANY QUESTIONS FROM MEMBERS OF THE COMMITTEE TO DR. CHISHOLM?

THANK YOU. YOU MAY STEP DOWN AND YOU ARE FREE TO LEAVE.

THE WITNESS: THANK YOU, SIR.

MR. WEBB: THE NEXT WITNESS IS REVEREND McMILLIAN.

THE CLERK: REVEREND McMILLIAN, COME INTO THE COURTROOM, PLEASE.

JUDGE GODBOLD: MR. WEBB, WHAT IS THE TESTIMONY RELEVANT TO?

MR. WEBB: ABOUT THE TELEPHONE NUMBER. HE WAS THE HEAD OF THE OFFICE OF MINORITY AFFAIRS AT THE UNIVERSITY OF SOUTH CAROLINA.

JUDGE GODBOLD: ALL RIGHT.

THE CLERK: RAISE YOUR RIGHT HAND, PLEASE.

YOU DO SOLEMNLY SWEAR THE TESTIMONY YOU ARE ABOUT TO GIVE SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

THE WITNESS: I DO.

THE CLERK: BE SEATED, PLEASE, AND STATE YOUR FULL NAME FOR THE RECORD.

WAS ABOUT A SOUTH CAROLINA ATHLETE, AND WE PICK UP HIS TESTIMONY FROM THAT POINT.

JUDGE GODBOLD: ALL RIGHT, SIR.

MR. DOAR: MR. CHISHOLM.

THE CLERK: MR. CHISHOLM, COME TO THE COURTROOM, PLEASE.

MR. CHISHOLM, I REMIND YOU THAT YOU ARE STILL UNDER OATH.

YOU MAY BE SEATED AND STATE YOUR FULL NAME FOR THE RECORD.

THE WITNESS: MY NAME IS ANDREW JAMES CHISHOLM.

JUDGE GODBOLD: MR. CHISHOLM, THE COMMITTEE REMINDS YOU THAT, AS YOU WERE TOLD AT THE PRIOR SESSION, THAT THESE PROCEEDINGS BY LAW ARE CONFIDENTIAL.

THE WITNESS: YES, SIR.

- - -

ANDREW JAMES CHISHOLM,

RECALLED AS A WITNESS, BEING PREVIOUSLY SWORN, TESTIFIED FURTHER AS FOLLOWS:

FURTHER DIRECT EXAMINATION

BY MR. DOAR:

Q. MR. CHISHOLM, WHEN YOU TESTIFIED HERE BEFORE, YOUR TESTIMONY WAS INTERRUPTED IN ORDER TO PERMIT YOU TO MEET ANOTHER ENGAGEMENT THAT YOU HAD HAD FOR SOME TIME.

I WOULD LIKE TO NOW CONTINUE THE QUESTIONING THAT I

INITIATED WITH YOU IN AUGUST, IF THAT'S ALL RIGHT.

I WOULD LIKE TO GO BACK FOR A MINUTE AND HAVE YOU RELATE TO THE COMMITTEE WHEN YOU FIRST MET WILLIAM BORDERS.

A. OKAY, SIR.

THE FIRST TIME I MET MR. BORDERS WAS DURING THE CARTER PRESIDENTIAL CAMPAIGN. THIS WAS I WOULD GUESS IN 1976, AND IT WAS DURING A NATIONAL CONFERENCE OF THE NATIONAL BAR ASSOCIATION WHICH WAS HOSTED IN HOUSTON, TEXAS.

I WAS INTRODUCED TO MR. BORDERS AT THAT TIME BY MR. BEN BROWN WHO WAS A FAIRLY HIGH OPERATIVE IN THE CARTER CAMPAIGN, DURING THE CARTER CAMPAIGN.

I WAS INTRODUCED TO MR. BORDERS AS AN INDIVIDUAL WHO WOULD BE ACTIVELY INVOLVED, AND IT HAD SPECIAL CONSEQUENCES FOR ME BECAUSE I WAS DIRECTOR OF THE MINORITY AFFAIRS DIVISION OF THE CARTER CAMPAIGN, AND, OF COURSE, IT WAS EXPLAINED TO ME THAT MR. BORDERS WAS VERY INTRICATELY INVOLVED NOT ONLY IN THE NATIONAL BAR ASSOCIATION BUT HAD MANY, MANY CONTACTS THROUGHOUT THE COUNTRY IN THE BLACK COMMUNITY THAT WOULD BE IMPORTANT TO ME IN MY EFFORTS AS DIRECTOR OF THE MINORITY DIVISION CAMPAIGN. SO THAT WAS MY FIRST OPPORTUNITY TO MEET HIM.

Q. AND DID YOU HAVE A CONVERSATION WITH HIM AT THIS BAR ASSOCIATION MEETING?

A. YES, SIR. YES, SIR, WE DID.

Q. AND DID YOU HAVE ANY DISCUSSION DURING THAT MEETING

ABOUT HOW YOU WOULD CONTACT HIM AND WHAT CIRCUMSTANCES WOULD ARISE IF YOU DID CONTACT HIM?

A. YES, SIR. AFTER LEARNING OF HIS SIGNIFICANCE AND HIS KNOWLEDGE ACROSS THE COUNTRY, I INDICATED TO HIM THAT I WOULD CALL UPON HIM FOR ADVICE AND ASSISTANCE.

HE MADE IT ESPECIALLY CLEAR TO ME THAT HE WOULD NOT LIKE TO DO BUSINESS OVER HIS TELEPHONE AND THAT IF I NEEDED ANYTHING FROM HIM THAT I SHOULD CALL HIM AND THEN HE WOULD SUBSEQUENTLY CALL ME BACK FROM A PAY TELEPHONE.

Q. DID HE AT THAT TIME MAKE ANY EXPLANATION TO YOU OF WHY HE WANTED TO DO BUSINESS THAT WAY?

A. WELL, HE EXPLAINED THAT HE WAS CONCERNED ABOUT WHETHER OR NOT HIS TELEPHONE WOULD HAVE LISTENING DEVICES OR SOMEONE HAVING PRIVILEGE TO HIS LINE AND, OF COURSE, THE CONVERSATIONS THAT HE WOULD HAVE WITH VARIOUS PEOPLE. I THINK THAT WAS THE REASON AS IT WAS GIVEN TO ME FOR HIM NOT WANTING TO ACCEPT THESE CALLS.

Q. NOW, FOLLOWING THAT INITIAL MEETING WITH MR. BORDERS, DID YOU HAVE CONTACT WITH HIM WHILE YOU WERE THE UNITED STATES MARSHAL FOR THE DISTRICT OF SOUTH CAROLINA?

A. YES, SIR. WE HAD PERIODIC CONTACTS. OFTENTIMES WHEN I WAS INVITED TO WASHINGTON FOR WHITE HOUSE EVENTS OR OTHER KINDS OF EVENTS THAT RELATED TO PRESIDENTIAL APPOINTMENTS, MR. BORDERS WOULD BE IN ATTENDANCE.

WE WOULD HAVE CONVERSATIONS DURING THESE VISITS, AND

THE MAJORITY OF MY CONVERSATION, IF NOT ALL, WITH MR. BORDERS DURING THAT PERIOD WAS PRIMARILY LIMITED TO THAT KIND OF RELATIONSHIP.

Q. DO YOU KNOW IF MR. BORDERS HAD ANY RESPONSIBILITIES WITH RESPECT TO THE CARTER ADMINISTRATION?

A. YES, SIR. MR. BORDERS HAD A VERY IMPORTANT POSITION DURING THE CAMPAIGN WHICH WAS A MEMBER OF THE ESTEEMED FINANCIAL COMMITTEE OF THE CARTER CAMPAIGN.

OF COURSE, WE ALL KNOW HOW SIGNIFICANT THAT IS TO A POLITICAL CAMPAIGN.

FOLLOWING THE SUBSEQUENT WIN OF PRESIDENT CARTER, MR. BORDERS BECAME A VERY HIGH POLITICAL ADVISOR, PRIMARILY THROUGH THE DEMOCRATIC NATIONAL COMMITTEE, SO MR. BORDERS HAD A VERY, VERY IMPORTANT ROLE, NOT ONLY DURING THE CAMPAIGN BUT FOLLOWING THE CAMPAIGN, PRIMARILY AS A HIGH LEVEL ADVISOR.

Q. NOW, YOU MENTIONED A MAN BY THE NAME OF MR. BEN BROWN.

A. YES, SIR.

Q. AND YOU SAY THAT HE ALSO WAS INVOLVED IN THE CARTER CAMPAIGN?

A. YES, SIR.

Q. IS THAT HOW YOU FIRST WERE INTRODUCED TO THE CAMPAIGN?

A. YES, SIR. MR. BROWN WAS PERHAPS THE HIGHEST RANKING STAFF PERSON DURING THE CARTER CAMPAIGN WHEN I FIRST MET HIM.

HE SUBSEQUENTLY BECAME THE DEPUTY CAMPAIGN DIRECTOR AND THE PERSON THAT I RELATED TO IN MY CAPACITY AS DIRECTOR

OF MINORITY AFFAIRS.

IT WAS IN HOUSTON WHEN MR. BROWN INTRODUCED ME TO MR. BORDERS AND INFORMED ME IN FACT THAT MR. BORDERS WOULD HAVE A VERY IMPORTANT ROLE.

FOLLOWING THE CAMPAIGN, MR. BROWN BECAME THE DEPUTY DIRECTOR OF THE DEMOCRATIC NATIONAL COMMITTEE. THAT WAS THE POLITICAL ARM OF THE DEMOCRATIC PARTY, AND OFTENTIMES MR. BORDERS RELATED THROUGH MR. BROWN TO OTHER POLITICAL RELATIONS TO THE ADMINISTRATION AND TO THE DEMOCRATIC PARTY.

Q. NOW, DURING THE CAMPAIGN DID YOU BECOME ACTIVE IN SOUTH CAROLINA ON THE PART OF THE CARTER CAMPAIGN?

A. YES, SIR. AGAIN, I'M VERY ALTRUISTIC TOWARD MR. CARTER AND WILL REMAIN SO BECAUSE OF MY PERSONAL CONVICTIONS, BUT THE FACT OF THE MATTER IS THAT PRIOR TO HIS ANNOUNCEMENT OF RUNNING FOR THE PRESIDENCY, MR. CARTER HAD APPOINTED ME AS THE FIRST BLACK PROBATION SUPERVISOR IN THE STATE OF GEORGIA WHEN HE WAS GOVERNOR, AND WE KINDLED A RELATIONSHIP AT THAT TIME.

FOLLOWING [illegible], I MOVED BACK TO SOUTH CAROLINA, AND WHEN HE ANNOUNCED HIS DECISION TO RUN, I IMMEDIATELY VOLUNTEERED MY SERVICES IN SOUTH CAROLINA.

MR. CARTER VISITED SOUTH CAROLINA DURING THE EARLY STAGES OF HIS CAMPAIGN. MR. BROWN MADE THE VISIT ALONG WITH HIM.

THEY FOUND SOUTH CAROLINA TO BE ONE OF THE BETTER

ORGANIZED STATES IN THE COUNTRY ON HIS BEHALF, AND IN PARTICULAR THE STRUCTURE THAT WE HAD IMPLEMENTED IN SOUTH CAROLINA IN THE BLACK COMMUNITY WAS HIGHLY ORGANIZED.

TO THE EXTENT THEY WERE IMPRESSED, I WAS INVITED TO COME TO ATLANTA TO HELP ORGANIZE THE NATIONAL EFFORTS IN THE MINORITY COMMUNITY, PRIMARILY BLACK, ASIANS, CETERA, HISPANICS, THE WAY I HAD ORGANIZED THE CAMPAIGN IN SOUTH CAROLINA.

Q. AND DID YOU COME THROUGH THAT EXPERIENCE TO UNDERSTAND WHO WAS ONE OF THE LEADING BLACK PERSONS IN THE STATE OF FLORIDA ON BEHALF OF PRESIDENT CARTER?

A. YES, SIR. AS WELL AS OTHER STATES.

Q. WELL, I'M SPEAKING NOW SPECIFICALLY OF FLORIDA.

A. YES, SIR.

Q. AND CAN YOU TELL ME WHAT ROLE YOU UNDERSTOOD JUDGE HASTINGS AT THAT TIME, ALCEE HASTINGS, PLAYED IN THE POLITICAL CAMPAIGN?

A. WELL, OF COURSE, I UNDERSTOOD THAT JUDGE HASTINGS WAS A HIGHLY RECOGNIZED BLACK LAWYER OUT OF THE NORTHERN PART OF, EXCUSE ME, OUT OF THE FORT LAUDERDALE AREA, AND THAT BECAUSE OF THIS IMAGE THAT HE WAS VERY EFFECTIVE IN THE BLACK COMMUNITY POLITICALLY AND THAT HE WOULD BE DOING IN FLORIDA WHAT I HAD DONE IN SOUTH CAROLINA.

Q. NOW, DID YOU DURING THAT CAMPAIGN IN 1976 MEET JUDGE HASTINGS?

A. NO, SIR. I NEVER HAD AN OPPORTUNITY TO MEET HIM. HEARD AN AWFUL LOT ABOUT HIM BUT NEVER MET HIM.

Q. WHEN WAS THE FIRST TIME THAT YOU EITHER SPOKE TO HIM OR MET HIM?

A. I WAS ON THE BOARD OF NOVA UNIVERSITY'S CRIMINAL JUSTICE BOARD. NOVA WAS INTERESTED IN DEVELOPING A CRIMINAL JUSTICE PROGRAM, AND AT THAT TIME I WAS HEAVILY INVOLVED IN DEVELOPING CRIMINAL JUSTICE PROGRAMS AT COLLEGES AND UNIVERSITIES, SO I WAS INVITED TO BE A MEMBER OF THAT BOARD.

IN A CONVERSATION WITH A FRIEND OF MR. HASTINGS OUT OF SOUTH CAROLINA, I WAS TOLD TO CONTACT HIM IF I NEEDED ANY ASSISTANCE, ANY TOURING OF THE FORT LAUDERDALE AREA OR WHATEVER, IF I NEEDED ANYTHING TO CONTACT HIM.

WELL, I DID MAKE THE VISIT TO FORT LAUDERDALE AND PARTICIPATED AS A BOARD MEMBER. I DIDN'T HAVE AN OPPORTUNITY TO SPEND MUCH TIME WITH HIM. I CALLED HIM AND WE SPOKE OVER THE TELEPHONE, AND IT WAS A CORDIAL CONVERSATION.

I DID IT PRIMARILY BECAUSE OF THE FACT THAT I HAD INDICATED TO HIS FRIEND IN SOUTH CAROLINA THAT I WOULD CALL HIM, BUT WE NEVER DID GET TOGETHER.

Q. NOW, DO YOU REMEMBER WHEN THAT WAS?

A. THIS WAS PRE CAMPAIGN. I WOULD SAY IT HAD TO BE AROUND '75, SOMEWHERE AROUND THERE.

Q. AND WHO WAS THE FRIEND IN SOUTH CAROLINA THAT SUGGESTED YOU CALL HIM?

A. ATTORNEY HEMPHILL PRIDE.

Q. SO YOU UNDERSTOOD THAT HEMPHILL PRIDE AND JUDGE HASTINGS HAD A FRIENDSHIP?

A. YES. IT WAS EXPLAINED TO ME AN INTIMATE FRIENDSHIP, INTIMATE MEANING THAT THEY WERE VERY CLOSE.

Q. NOW, WHEN WAS THE FIRST TIME THAT YOU MET JUDGE HASTINGS PERSONALLY?

A. IT WAS AROUND 1982. NOW, HERE IN ATLANTA AN ORGANIZATION THAT I FOUNDED IN 1974 AT THE UNIVERSITY OF ALABAMA, THE NATIONAL ASSOCIATION OF BLACKS IN CRIMINAL JUSTICE, WAS HAVING ITS TENTH ANNUAL CONFERENCE, AND A NUMBER OF THE BOARD MEMBERS OF THE ORGANIZATION WHO WERE AWARE OF THE HASTINGS SITUATION IN FLORIDA, THAT IS THE SITUATION INVOLVING SOME LEGAL ISSUES, ALONG WITH A FRIEND OUT OF WASHINGTON BY THE NAME OF BORDERS, THE ASSOCIATION WAS INTERESTED BECAUSE ON ONE HAND HERE WAS NEWS ACCOUNTS OF A MAN INDICATING THAT AS A BLACK JUDGE, FEDERAL JUDGE, HE WAS UNDER ATTACK AND THAT IT WAS AN IMPROPER ATTACK AND TRIALS WERE GOING ON, A LOT OF COMMUNICATIONS. SO A NUMBER OF PEOPLE WANTED TO HEAR ABOUT THIS SITUATION.

I WAS ASKED TO CONTACT JUDGE HASTINGS TO SEE OF HIS AVAILABILITY. I CALLED HIM. ASKED HIM IF HE COULD COME TO ATLANTA TO SPEAK AND IN PARTICULAR TO SPEAK ABOUT HIS LEGAL DIFFICULTIES.

OVER THE TELEPHONE, HE INDICATED TO ME, "YES, I WILL

BE MORE THAN HAPPY TO ACCEPT THE INVITE, BUT I WANT YOU TO KNOW THAT I'M GOING TO SPEAK MY MIND AND SAY WHAT I FEEL."

OF COURSE, FROM MY PERSPECTIVE WE DIDN'T HAVE A GAG ORDER ON WHAT HE COULD SAY OR WHAT HE SHOULDN'T SAY, AND SO I ENCOURAGED HIM TO FEEL FREE TO DO THAT.

ACCEPTING THAT INVITATION AND DURING THE CONFERENCE WAS THE FIRST TIME ACTUALLY FACE TO FACE I HAD AN OPPORTUNITY TO MEET JUDGE HASTINGS.

Q. AND JUDGE HASTINGS DID SPEAK AT YOUR CONFERENCE?

A. INDEED HE DID.

Q. DO YOU REMEMBER THE TIME? CAN YOU FIX THE TIME OF THAT?

JUDGE TJOFLAT: OF WHAT NOW?

MR. DOAR: THE TIME OF THE CONVENTION.

BY MR. DOAR:

Q. IT WAS IN ATLANTA, WASN'T IT?

A. YES, SIR. IT WAS HERE IN ATLANTA. IT WAS DURING THE MONTH OF EARLY MARCH OF THAT YEAR.

JUDGE TJOFLAT: 1982?

THE WITNESS: YES, SIR.

BY MR. DOAR:

Q. AND DO YOU REMEMBER WHAT JUDGE HASTINGS SPOKE ABOUT?

A. VERY VIVIDLY.

Q. COULD YOU RELATE THAT TO THE COMMITTEE?

A. WELL, THERE ARE CERTAIN STEREOTYPES THAT I AND I GUESS

MANY PEOPLE HAVE OF JUDGES, AND IN PARTICULAR FEDERAL JUDGES, AND THAT IS A SENSE OF ALTRUISM TOWARD DUE PROCESS AND THE INTEGRITY OF THE COURT AND THE PROTECTION OF THE PEOPLE OF THIS COUNTRY THROUGH THAT PROCESS.

WE HAD ANTICIPATED THAT JUDGE HASTINGS WOULD TALK ABOUT HIS PROBLEMS INVOLVING INDICTMENTS BUT NOT AT THE LEVEL THAT HE SPOKE.

HE WAS VERY, VERY DEMONSTRATIVE. HE WAS VERY DEFIANT AND VERY FIRM ABOUT THE CHARGES THAT HAD BEEN LEVELED AGAINST HIM.

I REMEMBER HIM STARTING OUT BY SAYING THAT, "I KNOW THAT THE F.B.I. IS IN THE ROOM, AND I KNOW THAT THE F.B.I. WANTS TO CAPTURE THE ESSENCE OF MY PRESENTATION BUT IN FACT" -- I'M PARAPHRASING NOW, NOT QUOTING -- "IN FACT, I DON'T PARTICULARLY CARE. I'M GOING TO SAY WHAT WAS ON MY MIND."

HE USED A GREAT DEAL OF HARD CORE PROFANITY DURING HIS PRESENTATION.

THE REASON I SAID THAT I VIVIDLY REMEMBERED THAT, BECAUSE, OF COURSE, THIS WAS A TOTAL SHOCK, NOT ONLY TO ME BUT MANY OF MY COLLEAGUES WHO SAT AT THE HEAD TABLE THAT NIGHT, TO HEAR A FEDERAL JUDGE PRESENT HIMSELF ALONG THESE LINES. IT JUST WENT AGAINST THE TOTAL GRAIN.

QUITE FRANKLY, I WAS JUST ABSOLUTELY SHOCKED THAT A FEDERAL JUDGE COULD SAY AND IN FACT DID SAY WHAT HE SAID THAT NIGHT BECAUSE IT WENT TOTALLY AGAINST THE HISTORICAL

PERCEPTION OF JUDGES AND FEDERAL JUDGES FROM OUR PERSPECTIVE, SO WE WERE ASTONISHED.

Q. WHEN YOU SAY YOU WERE SHOCKED AT WHAT HE DID SAY, CAN YOU TELL THE COMMITTEE WHAT YOU REMEMBER HE DID SAY?

A. WELL, AGAIN PARAPHRASING, HIS PRESENTATION WAS GEARED TOWARD A FEDERAL SYSTEM HE REFERRED TO AS BEING RACIST IN NATURE AND THAT THE ONLY REASON HE WAS GOING THROUGH HIS PROBLEMS WAS THE FACT THAT HE WAS BLACK AND THAT BY WAY OF FRIENDSHIP, A FRIEND WAS HAVING SOME PROBLEMS AND THAT THE SUBSEQUENT INVESTIGATION AND INDICTMENT REALLY WERE KIND OF DIRECTED AT HIM AS A BLACK INDIVIDUAL WITH THIS FRIENDSHIP AS OPPOSED TO THE TRUTH.

JUDGE TJOFLAT: WHAT FRIENDSHIP?

THE WITNESS: THE FRIENDSHIP THAT HE HAD WITH HIS FRIEND OUT OF WASHINGTON THAT HAD BEEN INDICTED OR WAS UNDER INVESTIGATION FOR ALLEGED IMPROPRIETY WITH ONE OF HIS CLIENTS.

OF COURSE --

BY MR. DOAR:

Q. WHEN YOU SAY ONE OF HIS CLIENTS, DO YOU MEAN WITH A MATTER IN HIS COURT? IS THAT WHAT YOU MEANT?

A. NO, SIR. THAT BORDERS, HIS FRIEND, WHO HAD EXPERIENCED THESE LEGAL PROBLEMS WAS SUPPOSEDLY DOING SOME THINGS FOR A CLIENT OR ATTEMPTING TO GET SOME THINGS DONE FOR A CLIENT THROUGH FRIENDSHIP WHICH WAS NOT THE CASE AS

HASTINGS WAS SUGGESTING IN HIS PRESENTATION, BUT SIMPLY BECAUSE HE HAD A FRIENDSHIP WITH BORDERS AND THE INFORMATION THAT HAD COME FORTH INVOLVING BORDERS AND HIS CLIENT WAS CIRCUMSTANTIAL WITH RESPECT TO THE RELATIONSHIP THAT BORDERS HAD WITH HIMSELF AS A FEDERAL JUDGE IN FLORIDA, BUT BECAUSE OF THE NATURE OF THE OFFERING THAT BORDERS HAD MADE WITH HIS CLIENT THAT IT WAS AUTOMATICALLY SUSPECTED THAT HASTINGS WAS THE PERSON THAT WAS SUPPOSEDLY GOING TO DO SOME FAVORS FOR BORDERS AS A RESULT OF HIS RELATIONSHIP WITH HIS CLIENT.

SO IT WAS THAT KIND OF TONE.

Q. NOW, WHILE YOU WERE UNITED STATES MARSHAL, I BELIEVE YOU TESTIFIED THAT YOU CONTINUED TO HAVE CONTACT FROM TIME TO TIME WITH WILLIAM BORDERS.

A. YES, SIR.

Q. AND THAT CONTACT CONTINUED AFTER YOU LEFT THE UNITED STATES MARSHAL AND RETURNED TO THE UNIVERSITY?

A. YES, SIR.

Q. AND WOULD YOU DESCRIBE THAT CONTACT AS BEING FREQUENT OR INFREQUENT DURING THE YEARS THAT YOU WERE AN OFFICIAL OF THE DEPARTMENT OF JUSTICE?

A. WELL, IT WAS SOMEWHERE BETWEEN INFREQUENT AND RARE, BECAUSE THE MAJORITY OF THE RELATIONSHIP PRIMARILY CENTERED AROUND POLITICAL EVENTS IN WASHINGTON, BECAUSE BORDERS VERY SELDOM CAME TO SOUTH CAROLINA OTHER THAN ON AN OCCASION WHEN HIS FRIEND OUT OF WASHINGTON, HEMPHILL PRIDE, WAS UNDER

INDICTMENT FOR VIOLATING FEDERAL HOUSING LAWS. HE DID VISIT. I WAS U.S. MARSHAL.

WE HAD CASUAL CONVERSATIONS DURING THIS PERIOD, BUT THE MAJORITY OF THE RELATIONSHIP WHEN I ATTENDED POLITICAL ACTIVITIES IN WASHINGTON WE SAW EACH OTHER. WE HAD BRIEF CONVERSATIONS. PRIMARILY LIMITED TO THAT.

FOLLOWING MY U.S. MARSHAL YEARS, THE RELATIONSHIP BECAME SOCIAL RATHER THAN POLITICAL BECAUSE I WAS NOT INVOLVED IN POLITICAL ACTIVITIES.

THAT RELATIONSHIP PRIMARILY STEMMED FROM MR. BORDERS' INTEREST IN REPRESENTING BLACK ATHLETES ON OUR ATHLETIC SCHOLARSHIPS, AND HE WAS CONCERNED ABOUT CULTIVATING A RELATIONSHIP AT THE UNIVERSITY OF SOUTH CAROLINA WITH SOME BLACK ATHLETES. ONE IN PARTICULAR WAS THE HEISMAN TROPHY CANDIDATE, AND ANOTHER WAS AN ALL AMERICAN TIGHT END.

HE WANTED TO MAKE CONTACT WITH THOSE PEOPLE TO TALK ABOUT POTENTIALLY REPRESENTING THEM IN THEIR NEGOTIATIONS FOR PROFESSIONAL CONTRACTS.

Q. NOW, MR. CHISHOLM, YOU HAVE TOLD THE COMMITTEE WHEN YOU MET MR. BORDERS AND HAVE DESCRIBED YOUR CONTACTS WITH HIM SINCE THAT TIME, AND YOU HAVE TOLD US OF YOUR KNOWLEDGE OF WHO JUDGE HASTINGS WAS AND ALSO OF THE OCCASION YOU TELEPHONED HIM AND AGAIN WHEN YOU MET HIM OR WERE WITH HIM WHEN HE MADE A PRESENTATION AT THAT CONVENTION IN ATLANTA, AND I BELIEVE YOU HAVE ALSO TESTIFIED THAT YOU ARE WELL

ACQUAINTED WITH HEMPHILL PRIDE.

A. YES, SIR.

Q. AND YOU KNOW THAT THE COMMITTEE IS HERE WITH THE RESPONSIBILITY OF LOOKING INTO THE COMPLAINTS THAT HAVE BEEN FILED AGAINST JUDGE HASTINGS WITH RESPECT TO HIS PARTICIPATION WITH MR. BORDERS IN THE ATTEMPTS TO INFLUENCE HIMSELF WITH RESPECT TO A CASE THAT WAS BEFORE HIS COURT.

DO YOU HAVE ANY INFORMATION, ANY FURTHER INFORMATION WITH RESPECT TO THAT PARTICULAR CHARGE OR COMPLAINT AGAINST JUDGE HASTINGS ONE WAY OR THE OTHER THAT WOULD HELP THE COMMITTEE IN ITS INQUIRY?

A. I HAVE NO FURTHER COMMENTS IN TERMS OF THE SPECIFICITY OF THOSE CHARGES OR IN FACT KNOWING ANYTHING IN PARTICULAR ABOUT WHAT HAPPENED IN THE BORDERS SITUATION OTHER THAN THE CASUAL CONVERSATIONS THAT I HAVE HAD WITH PEOPLE WHO HAVE HAD RELATIONSHIPS WITH THESE PEOPLE LIKE I HAVE.

I KNOW EACH INDIVIDUAL. I KNOW PRIDE PERHAPS MORE SO THAN BORDERS OR HASTINGS, BUT IN TERMS OF THE KIND OF FRIENDSHIP THAT WOULD DISCLOSE A DEEPER ANALYSIS OF THIS SITUATION, NO, SIR.

MR. DOAR: THAT'S ALL THE QUESTIONS I HAVE, YOUR HONOR.

JUDGE GODBOLD: DOES ANY MEMBER OF THE COMMITTEE HAVE ANY QUESTIONS?

JUDGE JOHNSON: DO YOU KNOW AN EMPLOYEE, A BLACK

EMPLOYEE WHO WORKS FOR THE STATE OF SOUTH CAROLINA BY THE NAME OF CAROLYN McIVER?

THE WITNESS: YES, SIR, I DO.

JUDGE JOHNSON: HOW LONG HAVE YOU KNOWN HER?

THE WITNESS: I HAVE KNOWN MS. McIVER FROM APPROXIMATELY 1981 THROUGH THIS YEAR.

WHEN I FIRST MET HER SHE WAS INTRODUCED TO ME BY AN INDIVIDUAL WHO WAS ASSISTING HER IN BECOMING EMPLOYED IN SOUTH CAROLINA, AND IN PARTICULAR SHE WAS LOOKING FOR A POSITION AT THE UNIVERSITY OF SOUTH CAROLINA.

AT THAT TIME I WAS ASSISTANT TO THE PRESIDENT OF THE UNIVERSITY FOR MINORITY AFFAIRS, NOT FOR EMPLOYMENT BUT MINORITY AFFAIRS IN GENERAL, BUT I WAS IMPRESSED WITH MS. McIVER, AND STILL AM. SHE'S A VERY KNOWLEDGEABLE PERSON.

I SOUGHT TO ASSIST HER IN GAINING EMPLOYMENT AT THE UNIVERSITY WHICH DID NOT MEET ANY SUCCESS, BUT SOON THEREAFTER WITH CONVERSATIONS THAT I HAD OUT OF OUR GOVERNOR'S OFFICE, GOVERNOR RICHARD RILEY, AND THE PERSON WHO WAS IN CHARGE OF THE EDUCATIONAL DIVISION, I CERTAINLY DID EVERYTHING I COULD TO HELP MS. McIVER SECURE THAT POSITION.

TODAY SHE IS WORKING AS AN EDUCATIONAL SPECIALIST OUT OF GOVERNOR RILEY'S OFFICE IN SOUTH CAROLINA.

JUDGE JOHNSON: DO YOU KNOW WHAT RELATIONSHIP, IF ANY, SHE HAS OR HAD IN THE PAST WITH HEMPHILL PRIDE?

THE WITNESS: NO, SIR. I'M NOT AWARE OF THAT. I HAVE

NEVER HAD A RELATIONSHIP WITH MR. PRIDE TO REALLY KNOW HIS OUTSIDE RELATIONSHIPS PER SE.

JUDGE JOHNSON: AND I WILL ASK YOU THE SAME QUESTION AS TO THE RELATIONSHIP IN THE PRESENT OR THE PAST WITH JUDGE HASTINGS.

THE WITNESS: NO, SIR. I'M NOT AWARE OF THAT RELATIONSHIP EITHER.

JUDGE JOHNSON: AND HOW ABOUT BORDERS, ON HIS TRIPS TO SOUTH CAROLINA WHEN HE WAS INVOLVED IN THE PRIDE MATTER?

THE WITNESS: WELL, I SAW MR. BORDERS ON A NUMBER OF OCCASIONS WHEN HE MADE HIS VISITS TO SOUTH CAROLINA BUT NEVER SAW A FEMALE IN HIS PRESENCE DURING THAT TIME.

JUDGE JOHNSON: I WAS TALKING SPECIFICALLY ABOUT McIVER.

THE WITNESS: YES, SIR. I NEVER SAW HER WITH HIM.

JUDGE JOHNSON: ALL RIGHT.

JUDGE POINTER: I HAVE A FEW QUESTIONS, DR. CHISHOLM.

THE WITNESS: YES, SIR.

JUDGE POINTER: DO YOU KNOW IF MR. BORDERS HAD ANY ROLE TO PLAY IN JUDGE HASTINGS' APPOINTMENT AS A FEDERAL JUDGE?

THE WITNESS: NO, SIR, NOT SPECIFICALLY, BUT I WOULD SUSPECT THAT LOOKING AT THE POLITICAL PROCESS DURING THE TRANSITION PERIOD THAT HE PROBABLY PASSED ON SOME RECOMMENDATIONS AND ATTEMPTED TO INFLUENCE JUDGE HASTINGS'

APPOINTMENT. I WOULD SUSPECT THAT.

JUDGE POINTER: BUT YOU HAVE NO PERSONAL KNOWLEDGE --

THE WITNESS: NO, SIR.

JUDGE POINTER: -- AND MR. BORDERS NEVER TOLD YOU OF ANY INVOLVEMENT HE HAD?

THE WITNESS: NO, SIR. NONE WHATSOEVER.

JUDGE POINTER: WITH RESPECT TO THE SPEECH THAT JUDGE HASTINGS MADE TO THE CONFERENCE IN ATLANTA IN MARCH OF 1982, YOU INDICATED THAT AMONG THE THINGS THAT HE SAID WAS THAT THE SYSTEM OF JUSTICE WAS RACIST IN NATURE.

DO YOU RECALL WHETHER THOSE COMMENTS WERE THAT SIMPLY THE SYSTEM OF JUSTICE AS A WHOLE WAS RACIST OR WAS HE REFERRING TO AND SPEAKING OF PERSONALITIES, THAT IS SAYING THAT THE PEOPLE IN THE PRESENT DEPARTMENT OF JUSTICE OR THE WHITE HOUSE OR WHATEVER IT MAY HAVE BEEN WERE RACIST? WHAT WAS THE TONE OF THAT?

THE WITNESS: WELL, I THINK THE TONE WAS GENERIC AS FAR AS THE JUSTICE SYSTEM WAS CONCERNED AND THAT HE WAS BUT AN EXAMPLE OF THE EFFORTS OF THE JUSTICE SYSTEM TO DEMEAN, TO IMPAIR A BLACK PROFESSIONAL IN THE SYSTEM OF JUSTICE.

JUDGE POINTER: AND YOU UNDERSTOOD IT NOT TO BE SPECIFICALLY DIRECTED AGAINST, FOR EXAMPLE, THE THEN ATTORNEY GENERAL OR THE THEN PRESIDENT BUT OF A MORE GENERAL NATURE.

THE WITNESS: YES, SIR. THAT'S THE WAY THE TONE OF HIS SPEECH CAME ACROSS.

JUDGE O'KELLEY: IN REGARD TO THAT CONFERENCE, WAS HE PAID AN HONORARIUM?

THE WITNESS: NO, SIR, HE WAS NOD NOT PAID AN HONORARIUM, BUT IF MY MEMORY SERVES ME CORRECT, HIS TRANSPORTATION WAS PROVIDED.

JUDGE O'KELLEY: EXPENSES.

THE WITNESS: YES, SIR.

JUDGE GODBOLD: MR. CHISHOLM, DO YOU KNOW WHETHER THAT SPEECH WAS TAPED OR OTHERWISE RECORDED?

THE WITNESS: YOU KNOW, JUDGE, I WAS JUST SITTING HERE RETROFLECTIVELY TRYING TO DETERMINE WHETHER OR NOT THAT WAS TAPED, AND AT THIS TIME I DON'T HAVE ANY KNOWLEDGE THAT IT WAS OR NOT. I'M JUST NOT SURE.

I'M SURE THAT THERE WERE PROBABLY SOME PEOPLE THERE THAT DID, BUT OFFICIALLY, I CANNOT ATTEST TO THAT.

JUDGE GODBOLD: ALL RIGHT, SIR.

ANYTHING MORE?

JUDGE JOHNSON: DID YOU ATTEND JUDGE HASTINGS' INVESTITURE WHEN HE WAS SWORN IN AS A FEDERAL JUDGE?

THE WITNESS: NO, SIR. I HAD NO REASON. I DIDN'T KNOW HIM.

I WAS AWARE OF IT AND, OF COURSE, PLEASED TO HEAR THAT A BLACK LAWYER WAS APPOINTED TO THE FEDERAL BENCH, BUT I DIDN'T HAVE ANY AFFINITY ENOUGH TO JUST GO DOWN AND BEAR WITNESS TO THAT.

JUDGE JOHNSON: ALL RIGHT.

JUDGE GODBOLD: ALL RIGHT. THANK YOU, MR. CHISHOLM. YOU MAY STEP DOWN.

THE WITNESS: THANK YOU.

MR. WEBB: THE NEXT WITNESS IS MR. ROBERT LEWIS OF THE C & P TELEPHONE COMPANY OF MARYLAND.

JUDGE GODBOLD: I BEG YOUR PARDON, MR. WEBB?

MR. WEBB: THE NEXT WITNESS IS MR. ROBERT LEWIS OF THE C & P TELEPHONE COMPANY OF MARYLAND.

JUDGE GODBOLD: ALL RIGHT.

MR. WEBB: BEFORE HE COMES IN, IF I COULD JUST EXPLAIN A LITTLE BIT TO THE COMMITTEE WHAT MR. LEWIS IS BRINGING WITH HIM TODAY.

WE ASKED MR. LEWIS OF THE C & P TELEPHONE COMPANY TO PRODUCE SUBSCRIBER INFORMATION FOR THREE TELEPHONE NUMBERS. ONE OF THOSE NUMBERS IS AREA CODE 530 OR AREA CODE 301-530-1533. THAT IS A NUMBER THAT APPEARED IN THE MESSAGE PADS IN MR. BORDERS' LAW OFFICE WITH THE NAME OF MR. HESLINE, AND SO WE HAVE ASKED MR. LEWIS TO BRING WITH HIM INFORMATION AS TO THE SUBSCRIBER OF THAT TELEPHONE.

ANOTHER NUMBER THAT WE ASKED FOR WAS 301-897-5692. THAT IS A NUMBER THAT CAME FROM ONE OF THE HOTEL BILLS THAT WE RECENTLY OBTAINED, JUDGE TJOFLAT RECENTLY OBTAINED THROUGH THE, I GUESS THE ADMINISTRATIVE OFFICE OF THE COURTS.

THE THIRD NUMBER IS 301-565-0738. THAT'S A NUMBER WE

Mr. Bryant. The third witness whose prior testimony the House is submitting into evidence is Eleanor Golar-Williams. Ms. Golar-Williams testified before the Eleventh Circuit Investigating Committee that she resides in Columbia, South Carolina, and that at the time of her testimony she taught social work at the University of South Carolina. Ms. Golar-Williams further testified that in 1981 she resided at the Regency Square West apartment complex in Columbia, South Carolina, and that at that time her residence telephone number was 782-9387. When asked if she knows Hemphill Pride, Ms. Golar-Williams testified that she is acquainted with him. In response to the question whether there would be any possibility that Hemphill Pride would receive a telephone call at her home, Ms. Golar-Williams testified, "No. We do not have that kind of association or relationship." She further testified that Hemphill Pride has never been in her home.

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JUDGE GODBOLD: UNDER 28 UNITED STATES CODE, SECTION 372, SUBPARAGRAPH 14, PROVIDES, "ALL PAPERS, DOCUMENTS AND RECORDS OF PROCEEDINGS RELATED TO INVESTIGATIONS CONDUCTED UNDER THIS SUBSECTION," AND THIS IS SUCH AN INVESTIGATION, "SHALL BE CONFIDENTIAL AND SHALL NOT BE DISCLOSED BY ANY PERSON IN ANY PROCEEDING."

YOU MAY PROCEED, MR. DOAR.

JUDGE TJOFLAT: IS IT ELEANOR IS THE FIRST NAME?

THE WITNESS: YES.

JUDGE TJOFLAT: IS IT E-L-I-N-O-R?

THE WITNESS: E-L-E-A-N-O-R.

JUDGE TJOFLAT: THANK YOU.

THE WITNESS: AND THE LAST NAME IS GOLAR-WILLIAMS.

MR. DOAR: I'M SORRY, MRS. GOLAR-WILLIAMS. I APOLOGIZE FOR MISUNDERSTANDING THAT. I THOUGHT THAT THE GOLAR WAS A MIDDLE NAME, BUT I UNDERSTAND NOW THAT IT WAS MRS. GOLAR-WILLIAMS.

THE WITNESS: RIGHT.

MR. DOAR: THANK YOU.

- - -

ELEANOR GOLAR-WILLIAMS,

CALLED AS A WITNESS, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. DOAR:

Q. WHERE DO YOU LIVE?

A. I LIVE AT 1215 McDUFFIE AVENUE, COLUMBIA, SOUTH CAROLINA.

Q. AND HOW LONG HAVE YOU LIVED THERE?

A. NOT QUITE THREE YEARS.

Q. WHERE DID YOU LIVE PRIOR TO McDUFFIE AVENUE?

A. THE REGENCY SQUARE WEST, 2050 BELTLINE DRIVE, COLUMBIA, SOUTH CAROLINA, WHICH IS A PART OF FOREST ACRES.

Q. WAS THAT AN APARTMENT COMPLEX?

A. APARTMENT.

Q. MS. GOLAR-WILLIAMS, DID YOU LIVE AT THAT APARTMENT COMPLEX AT THE REGENCY SQUARE APARTMENTS IN THE YEAR OF 1981?

A. YES, I DID.

Q. AND WHAT WAS YOUR TELEPHONE NUMBER AT THAT APARTMENT COMPLEX?

A. 782-9387.

JUDGE TJOFLAT: SEVEN EIGHT WHAT?

THE WITNESS: TWO-9387.

BY MR. DOAR:

Q. WHAT IS YOUR OCCUPATION?

A. I TEACH. I'M AN EDUCATOR. I TEACH AT THE UNIVERSITY OF SOUTH CAROLINA IN THE COLLEGE OF SOCIAL WORK.

Q. AND WHAT IS YOUR SPECIALTY?

A. SOCIAL WORK.

DO YOU MEAN THE COURSES I TEACH?

Q. YES. JUST GENERALLY.

A. I TEACH GENERALLY THE MACROMETHODS OF SOCIAL WORK. HUMAN BEHAVIOR IN THE SOCIAL ENVIRONMENT. SOME SPECIAL COURSES IN DEPRIVATION AND DISCRIMINATION. I TEACH SOME COURSES THAT WE OFFER ON THE UNDERGRADUATE LEVEL, AND I TEACH SOCIAL POLICY AND POLICIES.

Q. NOW, DO YOU KNOW HEMPHILL PRIDE?

A. YES, I DO. I AM ACQUAINTED. I DON'T REALLY KNOW HIM, BUT I AM ACQUAINTED.

Q. DID YOU KNOW HIM IN THE YEAR 1981?

A. YES. IN FACT, I MOVED TO COLUMBIA IN 1972 FROM ATLANTA, AND I MET HIM WHENEVER I DID AT SOME, YOU KNOW, MEETINGS AND THAT KIND OF THING, AND THAT'S THE WAY I KNOW HIM.

Q. DID YOU EVER HAVE ANY COMMUNICATIONS WITH HIM BACK AND FORTH IN THE SUMMER OF 1981?

A. NO, SIR.

Q. DO YOU KNOW PATRICIA WILLIAMS?

A. YES.

Q. WHO IS PATRICIA WILLIAMS?

A. PATRICIA WILLIAMS IS MY EX-DAUGHTER-IN-LAW.

Q. AND HOW LONG HAVE YOU KNOWN HER?

A. OH, LET'S SEE. SINCE 1964.

Q. AND COULD YOU TELL US JUST FOR THE RECORD WHEN PATRICIA WILLIAMS BECAME YOUR EX-DAUGHTER-IN-LAW RATHER THAN

YOUR DAUGHTER-IN-LAW?

A. OKAY. LET'S SEE IF I CAN RECALL. THIS IS APPROXIMATE.

Q. YES. THAT'S ALL RIGHT.

A. SHE MARRIED MY SON IN '68. THEY WERE DIVORCED APPROXIMATELY -- LET'S SEE. MY GRANDAUGHTER IS -- MY GRANDAUGHTER WAS ABOUT THREE OR SO. SHE WAS BORN IN '71. SO SOMEWHERE AROUND '73, AND THIS IS VAGUE.

Q. MRS. GOLAR-WILLIAMS, AFTER YOUR SON AND YOUR DAUGHTER-IN-LAW WERE DIVORCED, DID YOU KEEP IN TOUCH WITH PATRICIA WILLIAMS?

A. OH, YES. WE STILL KEEP IN TOUCH.

Q. AND COULD YOU --

A. BECAUSE OF MY GRANDAUGHTER.

Q. AND YOUR GRANDAUGHTER LIVES WITH PATRICIA WILLIAMS?

A. YES.

Q. AND DID YOU VISIT BACK AND FORTH WITH PATRICIA WILLIAMS?

A. WHEN I VISIT I VISIT MY SON, AND I'M IN TOUCH, AND SO I GET TO SEE BOTH OF THEM, MY DAUGHTER-IN-LAW AND MY GRANDAUGHTER.

Q. AND DO YOU KNOW JUDGE ALCEE L. HASTINGS?

A. NO, I DON'T. I JUST KNOW THE NAME.

Q. BUT YOU HAVE NEVER MET HIM?

A. NO, I HAVE NOT.

Q. HAVE YOU EVER HAD ANY COMMUNICATIONS WITH HIM?

A. NO, I HAVE NOT.

Q. DID YOUR DAUGHTER-IN-LAW EVER DISCUSS WITH YOU ANY MATTER IN CONNECTION WITH HEMPHILL PRIDE?

A. NO.

Q. CERTAIN TELEPHONE RECORDS THAT THE COMMITTEE HAS RECEIVED HERE FOR CONSIDERATION REFLECT THAT ON AUGUST 2ND, 1981, AT APPROXIMATELY 9:20 A.M., YOUR TELEPHONE NUMBER, 803-782-9387, RECEIVED A TELEPHONE CALL FROM THE TELEPHONE NUMBER OF YOUR DAUGHTER-IN-LAW'S RESIDENCE.

A. OKAY.

Q. AND THAT THE CALL LASTED FOR 18 MINUTES.

A. UH-HUH.

Q. NOW, THE RECORDS OF COURSE DON'T INDICATE WHO MADE THE CALL OR WHO RECEIVED THE CALL, BUT I WOULD LIKE TO ASK YOU IF YOU COULD SEARCH YOUR MEMORY AND TELL ME IF YOU HAVE ANY RECOLLECTION OF THAT CALL.

A. I DON'T HAVE ANY RECOLLECTION OF THE SPECIFIC CALL, BUT I CAN SAY THIS. I LIVE ALONE. I WAS THE ONLY ONE AT 803-782-9387.

WHEN MY DAUGHTER-IN-LAW CALLS OR MY GRANDDAUGHTER CALLS, NO MATTER WHERE IT'S FROM, WE DO HOLD CONVERSATIONS. THIS IS THE WAY WE VISIT MOST OF THE TIME.

Q. AND THERE WAS NO ONE LIVING IN YOUR APARTMENT THAT WOULD USE THE PHONE EXCEPT YOURSELF?

A. NO.

Q. AND WOULD THERE BE ANY POSSIBILITY THAT HEMPHILL PRIDE WOULD RECEIVE A TELEPHONE CALL THERE?

A. NO. WE DO NOT HAVE THAT KIND OF ASSOCIATION OR RELATIONSHIP. I JUST KNOW HIM.

Q. DO YOU KNOW OF ANY TIME THAT MR. HEMPHILL PRIDE WAS EVER IN YOUR APARTMENT?

A. HE'S NEVER BEEN IN MY APARTMENT. HE'S NEVER BEEN IN MY APARTMENT. THEN OR NOW. HE'S NEVER BEEN IN THE HOME IN WHICH I LIVE.

I HAVE SEEN HIM AT SOCIAL GATHERINGS.

SEE, I DO COMMUNICATE WITH MY GRANDAUGHTER AND MY EX-DAUGHTER-IN-LAW.

Q. ON A REGULAR BASIS?

A. YES. YOU KNOW, EVERY NOW AND THEN WE CALL. WE TALK LONG. SOMETIMES WE TALK SHORT.

PAT HAS CALLED ME TO SAY, YOU KNOW -- THIS WAS AUGUST 2ND, YOU SAY?

Q. AUGUST 2ND.

A. OKAY. IT MAY HAVE BEEN THAT I WAS JUST OUT OF TEACHING SUMMER SCHOOL. I CAN'T SAY. BUT USUALLY FACULTY TEACHERS, THERE ARE TWO SESSIONS OF SUMMER SCHOOL. WHICHEVER SESSION I TEACH IN, YOU KNOW, WE START MAKING PLANS FOR -- NAISHA IS HER NAME -- TO VISIT ME HERE FOR THE TIME I'M FREE, THE SESSION I'M FREE.

SINCE IT WAS IN AUGUST, IT COULD HAVE BEEN A DISCUSSION ABOUT HER COMING HERE. NOT HERE. COLUMBIA, SOUTH CAROLINA. OR SOMETHING ABOUT CAMP OR WHAT SHE'S DOING FOR THE SUMMER, YOU KNOW. BUT ALLAYS IT'S BEEN ABOUT, YOU KNOW, FAMILY AFFAIRS. NOTHING RELATED TO ANYTHING LEGAL.

Q. LET ME ASK YOU. DID YOUR DAUGHTER-IN-LAW PATRICIA WILLIAMS EVER SAY ANYTHING TO YOU ABOUT THE FACT THAT SHE WAS REPRESENTING JUDGE HASTINGS IN A CASE DOWN IN MIAMI?

A. ON ONE OCCASION, AND I DON'T KNOW THE DATES. I HAPPENED TO BE VISITING IN MIAMI, AND I WAS WITH MY SON, AND I CALLED HER TO SAY, "I'M HERE. WHEN CAN WE SEE ONE ANOTHER AND WHEN CAN I SEE MAISHA?"

SHE ASKED ME IF I HAD HEARD ABOUT THE CASE.

AT THE TIME, I HAD NOT HEARD ABOUT THE CASE.

Q. DID SHE DISCUSS THE CASE WITH YOU?

A. SHE DID NOT. SHE JUST SAID THAT SHE WAS THE ATTORNEY.

Q. AND THAT'S ALL SHE SAID?

A. THAT'S ALL SHE SAID.

MR. DOAR: I BELIEVE THAT'S ALL THE QUESTIONS --

THE WITNESS: AND I DID ASK, "IS HE RELATED TO JUDGE HASTY?" YOU KNOW, WILLIAM C. HASTY WHO IS NOW DEAD WHO WAS A VERY PROMINENT PERSON, JUDGE, AND I DID ASK HER THAT.

SHE SAID, "I DON'T KNOW."

AND THAT WAS IT.

BY MR. DOAR:

Q. DID YOU KNOW JUDGE HASTY?

A. YES, I DID.

MR. DOAR: THAT'S ALL THE QUESTIONS.

JUDGE GODBOLD: ANY QUESTIONS BY MEMBERS OF THE COMMITTEE?

THANK YOU VERY MUCH, MRS. GOLAR-WILLIAMS.

THE WITNESS: THANK YOU, SIR.

JUDGE GODBOLD: YOU ARE EXCUSED.

THE WITNESS: I AM FREE TO LEAVE?

JUDGE GODBOLD: YOU ARE FREE TO LEAVE.

THE WITNESS: WHO SHOULD I DISCUSS ABOUT --

MR. DOAR: WE HAVE GOT A PERSON OUTSIDE WHO WILL TAKE CARE OF THAT PROBLEM.

THE WITNESS: ALL RIGHT. THANK YOU.

MR. DOAR: COULD WE ASK MR. CRAWFORD TO COME INTO THE COURTROOM?

THE CLERK: MR. CRAWFORD, COME INTO THE COURTROOM, PLEASE.

RAISE YOUR RIGHT HAND, PLEASE.

YOU DO SOLEMNLY SWEAR THE TESTIMONY YOU ARE ABOUT TO GIVE SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

THE WITNESS: I DO, SIR.

THE CLERK: BE SEATED, PLEASE, AND STATE YOUR FULL NAME FOR THE RECORD.

Mr. **Bryant**. Finally, Mr. Chairman, I would like to offer into evidence House Exhibit 221, which is not contained in the House Exhibit notebooks. These are the telephone records of the residential phone of Patricia Williams from January 1982 through December 1983. The records indicate that on three occasions during 1982 a call was made from Ms. Williams' residential phone to the residential phone of Ms. Golar-Williams. This exhibit is relevant to Article XI which charges that Judge Hastings knowingly testified falsely under oath at his 1983 trial when he identified a call placed from Patricia Williams' residence phone to Ms. Golar-Williams' residence phone as a call he made to Hemphill Pride.

The **Chairman**. Is there objection to House Exhibit 221 being admitted?

Mr. **Anderson**. No, Mr. Chairman.

The **Chairman**. It will be admitted.

[The document referred to was marked House Exhibit No. 221 and was received in evidence.]

Mr. **Bryant**. Mr. Chairman, at this time, the House would like to move into evidence the following exhibits: House Exhibit 201, which was authenticated by Agent Wayne McDonald. The exhibit reports Agent McDonald's investigation into the location of a pay telephone in a U.S. courthouse in 1981 and its relationship to Judge Hastings' chambers at that time.

The **Chairman**. Is there objection to the admissibility of House Exhibit 201?

Mr. **Anderson**. I think it is irrelevant, but apart from that, none.

The **Chairman**. It will be admitted.

[The document referred to was marked as House Exhibit No. 201 and was received in evidence.]

Mr. **Bryant**. The House would like to move into evidence at this time House Exhibit 200 which is a diagram of the third floor of the U.S. courthouse in 1981, which indicates where Judge Hastings' chambers are located. Attached as House Exhibit 200A is a certification by the clerk of the court to the accuracy of the diagram.

The **Chairman**. The exhibit number is what?

Mr. **Bryant**. 200, with an attachment being House Exhibit 200A that is a certification by the clerk as to the accuracy of the diagram.

The **Chairman**. Is there objection to Exhibit 200?

Mr. **Anderson**. Relevance.

The **Chairman**. The exhibit will be admitted.

[The document referred to was marked as House Exhibit No. 200 and was received in evidence.]

Mr. **Bryant**. At this time, the House will move into evidence House Exhibit 198 which is a subscriber information which establishes that the telephone number (202) 789-9108 was assigned to a pay telephone in the U.S. courthouse in Washington, DC, in 1981.

The **Chairman**. Is there objection to that exhibit?

Mr. **Anderson**. Relevance.

The **Chairman**. It will be admitted.

[The document referred to was marked House Exhibit No. 198 and was received in evidence.]

Mr. **Bryant**. In addition, the House moves into evidence House Exhibits 123 and 124, which are the blowups of the October 5th and

October 8th conversations between Judge Hastings and William Borders. The House moves the charts into evidence and the reduced version of the charts because these charts were referred to during the testimony of Dr. Roger Shuy, and they contain the numbering of the turns of conversation which were also referred to during testimony.

The CHAIRMAN. Counsel, on admission into evidence of these blown-up charts, I can see there is some value in having the reduced versions made part of the record. I do not know that I can see the value in having the blown-up charts made part of the record. Obviously, we cannot reproduce those for each member of the U.S. Senate.

Mr. BRYANT. Mr. Chairman, at the close of this case, as we understand it, our obligation is going to be to summarize our case on the floor of the Senate before the entire Senate. At that point, these charts could be utilized, would be utilized by the counsel to point to the relevant dates and the juxtaposition of events.

The CHAIRMAN. But the blown-up version could be presented as a blown-up version of an exhibit already admitted into evidence, could it not?

Mr. BRYANT. It could if we could get some assurance of that in advance, if there will not be any objection raised against that at the time.

The CHAIRMAN. My thinking on it at this point is that your ability to use a blown-up version of an exhibit does not depend on whether that blown-up version has been admitted into evidence. And I would propose not to admit the blown-up versions but to permit the reduced versions at this time.

Does respondent's counsel have a point of view?

Mr. ANDERSON. We still have our reservations generally about transcripts, Mr. Chairman, but I think we made those clear. I think the Chair is correct in terms of the blown-up exhibits and charts that they should not come in. But the reduced version is only subject to our standing objection.

The CHAIRMAN. For the time being, we will admit the reduced version and not admit the larger version, but counsel can continue to use the larger version in explaining the case.

Mr. BRYANT. That is fine with the House.

Finally, Mr. Chairman, with respect to the bribery conspiracy case and the Articles pertaining to the false testimony given under oath by Judge Hastings at his criminal trial, the House moves into evidence House Exhibits 1A, 1B, and 1C. These exhibits are the large charts which we have used during our direct presentation of the case. Each of the entries on the charts has been established either through the testimony of a witness, an exhibit moved into evidence, or a stipulation. We have prepared a document that sets forth how the House has established each entry, and we will submit that document to the committee if it so desires.

In addition, we ask that the small version of the charts be put with the rest of the original House exhibits already offered and received into evidence. The reduced versions have been marked with the same House exhibit numbers.

The CHAIRMAN. Counsel, my reaction to that would be the same as my reaction to the earlier, which was that I would be inclined to permit the smaller versions of those charts to be admitted, but not to introduce—not to make part of the record of this case the larger versions.

Could I hear from respondent's counsel?

Mr. **Anderson**. I would ask the Chair, to the extent that Mr. Bryant believes the evidence is established to each of those events, I would ask that the Chair call for it and set aside some brief time for us to argue. I think that chart fixes in concrete some matters which I do not think are fixed at all well by the evidence, and I worry about its prejudicial effect because people tend to look at graphics and pictures.

Let me take just one illustration, if I may. The chart suggests that William Dredge met William Borders in the first week of March. I understand that is what Mr. Dredge says. The records say that there was no contact prior to May. His testimony before the Investigating Committee said, "We met some time between my indictment and the other." He told Agent Murphy he had known Borders for years.

When you put a chart out there when there are three different versions of the story, people are going to look at the chart, as I think members of the committee have, as though somehow it is now fixed in concrete that that meeting occurred in the first meeting in May. I think that is highly prejudicial.

At a minimum, I would ask the Chair to reserve his ruling there until we have a bit more evidence, and that issue can be debated fairly because I really do worry, especially with busy Senators and others who are going to look at that chart and say, well, these are all carved in stone, what else do we need to know. I think that is prejudicial.

The **Chairman**. I think the point is well taken that there should be an opportunity for respondent's counsel and House counsel to argue to the committee the issue of the appropriateness of admitting these charts, even the small versions of these charts, before we make that ruling. And I would propose to reserve the ruling at this time. We will schedule some time in the next couple of days when we could have that discussed in more detail.

Mr. **Bryant**. Mr. Chairman, that is fine with us. We will argue this—as long as we are given an opportunity to argue in favor of our exhibit, we will be happy to do that. We would point out, while we have the attention of the Senators assembled here, that his characterization of that March date we submit is wholly inaccurate. But we will argue that later.

This closes the House's case with regard to this portion of the Articles of Impeachment. We would respectfully submit that the opening statement with regard to the Title III portions of the Articles might best be held until after the lunch recess.

The **Chairman**. It is my understanding that the House has 20 minutes reserved for that and respondents have 20 minutes reserved also, or perhaps there was more time. We can check with the clerk. I do think it makes sense to have both of those opening statement presented at the same time or together to the committee. So on that basis, we will recess until 1:30.

Mr. Anderson, did you have a point that needed attention?

Mr. **Anderson**. Just one, Mr. Chairman. On the question of the testimony that was admitted, the prior testimony, I would ask—and I made the point and I think the Chair's ruling was that those witnesses would be recalled. I would request that they now be called.

Carolyn McIver was the woman with whom Judge Hastings spent the Super Bowl Sunday before the meeting with Hemphill Pride. She will have some recollection of those events, and that bears upon the alleged conversation that occurred, and she is relevant.

Eleanor Golar-Williams was the former mother-in-law of Patricia Williams and the grandmother of Ms. Williams' daughter. The question of the extent to which those telephone calls should have been fresh in Patricia Williams' mind at the time is a fact of consequence.

Andrew Chisholm in his Investigating Committee testimony has made it clear that even at a time when he was a senior official in the Carter campaign in the late 1970's, Mr. Borders was engaged in this pay telephone.

All of those I do not offer for evidence, but those are all matters that bear on facts of consequence here. I had hoped when the people were in Washington that we could deal with it. Since we cannot, I simply would ask the Chair to authorize the issuance of subpoenas to these people whose prior testimony has been received.

The **Chairman**. First, let me indicate that—was objection raised to the admissibility of the prior testimony, and on what basis?

Mr. **Anderson**. On the basis that it was taken at the Investigating Committee level, and on that basis, as you know, we have taken the position either all the Investigating Committee should come in or none of it. These are not witnesses who have ever been examined. The committee went one step further and ruled only those portions of the prior testimony that bear on the telephone numbers could come in. So, for example, Mr. Chisholm's testimony, I would be happy to do Mr.—I do not know that I would be happy about it, but Mr. Chisholm's testimony at the IC dealt with this question of telephone coded contacts.

I think we have been fairly persistent in our view, and I know the rules are not applying, but particularly unexamined prior testimony should not be admitted. I think I have identified that each of these witnesses has facts that bear upon matters of controversy. I would ask that they be subpoenaed.

The **Chairman**. Well, we will overrule the objection to the admissibility of the prior testimony that is being proffered by the House, and that relates to Madeline Petty, Carolyn McIver, Andrew Chisholm and Eleanor Golar-Williams. Those three will be admitted.

The question of which witnesses the respondent wishes to call as part of respondent's case is a decision for respondent, and we are not in any way interfering with that. If you wish to have subpoenas issued by the committee to secure the attendance of witnesses, we will do that.

Mr. **Anderson**. I just want to call it to your attention because I understood the eighth order to say that that would follow as a course if prior testimony was admitted and either party thought that the person ought to appear.

The CHAIRMAN. We will at this time recess until 1:30, and at that time take the opening statements on the Title III allegation in the case, both from House and from respondent.

Could I ask all Senators who are present to please meet for a very short period back in the conference room before we leave?

[Whereupon, at 11:56 a.m., the committee recessed, to reconvene at 1:30 p.m., this same day.]

AFTERNOON SESSION

The CHAIRMAN. The committee will reconvene.

At this time, I understand the House has closed its case with regard to Articles I through XV and now would like to make an opening statement prior to offering its case with regard to Article XVI of the Articles of Impeachment. Would House managers go ahead with that opening statement at this time?

First, do we have a record of the amount of time taken by the House and by respondent's counsel in their opening statement before? How much time was taken by the House?

Thirty-six minutes was taken, so you have up to 24 minutes if you need that additional time. Would the House go ahead and make their presentation?

HOUSE MANAGERS' OPENING STATEMENT REGARDING ARTICLE XVI

Mr. GEKAS. Yes, Mr. Chairman. I was about to begin to make the opening statement, but I have learned that the House is going to entertain a vote in the next few minutes. Perhaps knowing that I may just walk off the scene after I start the statement, we can begin now or wait again until that occurs. It is supposed to be very imminent. Why don't we start?

The CHAIRMAN. Well, why don't we start? If the House operates like the Senate, a lot of things that are about to happen do not happen for a while. If you would use the podium and microphone, I am sure that would help with the videotaping.

Mr. GEKAS. Mr. Chairman and members of the committee, we have reached a stage in these proceedings now where, as planned, the next portion of the proceedings will be presented. Article XVI of the resolution which is before you, which maintains the foundation of these impeachment proceedings, takes a new twist in the sage of the investigations and charges against Judge Hastings. This one has to do, as the succinct wording of Article XVI would point out, with an illegal disclosure in a wiretap investigation authorized by Judge Hastings, monitored by Judge Hastings, who gave orders that all of the contents be sealed and kept confidential, and with whom he had an intimate discourse with the U.S. Attorney handling the particular case in a very tightly monitored fashion. In that context, it is alleged—and the evidence will disclose and produce overwhelmingly—that Judge Hastings leaked information that destroyed an investigation.

This betrayal of his oath of office is in tandem, we allege, with all that has gone on before and which testimony you have heard up to now in these proceedings. But even if it were to stand alone, this violation of the oath of office undertaken by Judge Hastings would be enough by itself to allow the Senate to vote in the final stages of these proceedings to oust him from his public office. But then when taken together with all that we have presented, then the evidence will disclose and the atmosphere that will have been created from beginning to end will show a distinct pattern of misconduct on the part of the judge that will make your decision finally as a member of the committee and then as a member of the Senate casting a final vote ready and capable of eliminating Judge Hastings from the office of Federal judge.

What testimony will you hear today? You will hear references to Miami, to Hialeah, to North Bay Village, to U.S. Attorneys and undercover agents, and zoning officers and all kinds of names and circumstances. But out of it comes, throughout all of these names and circumstances and plots and sub-plots, the one bare element of a Federal judge leaking confidential information which endangered the lives of people involved in this case.

How did this all come about? In the southern portion of Florida, the U.S. Attorney's office and the FBI were deeply involved in a long and very dangerous undercover investigation involving the International Longshoremen's Association. There, an agent of the FBI, Johnny Rivero, had ingratiated himself with the fellowship and doings of the longshoremen people down on the docks and had made some headway in producing good evidence of corruption among the ILA, not only in the seeking of membership in that union, but also with the extracurricular enterprises that such a dock enterprise could bring about, including drug activity.

And so the FBI was making some great headway. They felt, however, to make an ultimate tie-in and an ultimate overt pattern work, that they had to do some covert wiretapping as well. And so the U.S. Attorney in charge, the assistant U.S. Attorney who was in charge of this particular phase of this investigation, Roberto Martinez, began the tedious task—and this will come out in evidence, and he will be very tedious in his testimony. I hope you will bear with him on how he went to the trouble to prepare this massive and particularized application for a wiretap.

We as Members of the Congress should be familiar with that. We created the law that said that we must have a system, if we are going to allow surveillance of a wiretap, that it has got to be strictly done with all the safeguards possible, with a fail-safe system that will make sure that the rights of privacy will be protected, and that the law enforcement officers will not go overboard.

Incidentally, that is the irony in this. We the Congress felt that we had to do something about surveillance, but we did not trust the law enforcement community broadly enough to let them go do what they want in wiretapping. But we imposed upon them a safeguard, to get a Federal judge to make sure that the law enforcement officers were going to work within the parameters of the authorization in a wiretap. We did not trust the law enforcement officers in the Congress. We trusted the judge to make sure that nothing went wrong in a wiretap and that law enforcement would not overstep its bounds.

Irony of ironies, in this case we have the law enforcement community doing its duty, and the Federal judge leaping off his bench to destroy what he was there to monitor.

And so this investigation went on, and the undercover agent was doing his work, and Mr. Martinez, doing his duty, prepared this massive application, discovered that the Federal judge on duty for that month was Alcee Hastings. And so that just routinely led him to go to the office and the chambers of Judge Hastings to secure authorization for the Title III wiretap. And as far as the application, of course, he had to show the circumstances that I have outlined to you and the evidence will show on this undercover situation of the ILA and the docks of Miami.

And so he did so. He went with the application, and the judge not only signed the order permitting it but then signed—again, an irony—a sealing order, which is a routine matter in these Title III situations, and that sealing order protected, or was supposed to protect, all of that information forever from anybody to protect confidentiality and the intimacy that is required for the perpetration, the successful perpetration of such an undercover situation.

And so the judge signed that and a sealing order. You will hear testimony from Mr. Martinez as to how that went along. And then the undercover agent went about his business, and the wiretap was installed. And pretty soon, the next phase of this is about to occur. That is, that the U.S. Attorney, working with the FBI, working with the law enforcement officers involved with the undercover agent and so forth, had to—under the law and in pursuit of the order issued by Judge Hastings—file a progress report.

We all know how that works. That progress report, then, was exactly that: a report to the judge, the monitoring judge as to what was happening with this wiretap. Was it worth continuing, or could the judge arbitrarily, as he had the power, cut it off and say it is fruitless, I don't want you to go any farther with it, that kind of thing? The progress reports, first, second, third, fourth, you will hear them and extensions of the original application and progress reports on those.

At any rate, the first progress report or the second you will hear from the evidence had Mr. Martinez disclose to the judge that there is some other activity going on that our undercover agent was able to find out. And so Judge Hastings said—I am paraphrasing—there is cause to allow us to continue with this wiretap because other things are happening.

There began to be disclosed through the undercover agent and contacts that he made with one Waxy Gordon, whose name will appear throughout all this and will come out repeatedly in the evidence that you are about to hear—from beginning to end, Waxy Gordon plays an important part in all of this. The undercover agent first assigned to the docks is now learning from Waxy Gordon, a zoning officer in that area, that certain things could be done with public officials in zoning in Hialeah. And so, dutifully, the wiretap disclosures and so forth find their way into the progress report given to the judge.

These progress reports, as we go along, began to indicate also that the mayor of Dade County, Steve Clark, and his name were being involved; that Waxy Gordon was able somehow to represent to the undercover agent that he had the ear of, if not the pocket of, the mayor of Dade County. And so it widened.

Now, here is an odd thing. The evidence will disclose—and this is important, and I am trying not to over-emphasize these things, but they are worthy of emphasis—that at those stages during these progress reports when the footnotes disclosed this expansion of knowledge and expansion of effort on the part of the undercover agent and the law enforcement agents to see what was going on, besides those things that were going on at the docks, the judge, Judge Hastings, Martinez will testify to, and you will hear it, actually went to the trouble of flipping back through what he was looking at in the progress report, and said words to the effect: Oh, this is heavy stuff. Something like that, he said. It involves the mayor of Dade County; Steve Clark is somehow involved. I am paraphrasing what the judge commented to Martinez in the course of the progress reports.

Then, later, in another progress report, the judge in commenting again to the U.S. Attorney made a specific reference to that portion of it that mentioned Mayor Clark, and said, Steve, the mayor, better watch out. He could be in a lot of trouble, or things like that, that were part of the main crux of the discussion between the judge and the U.S. Attorney, all relevant to our proceedings here and all important for you to cock your ears when that testimony appears from the witness stand.

At any rate, these progress reports and the ultimate conclusion of those went on and on, and a third investigation was launched because of information that came through these wiretaps, which also became a part of the progress report that Martinez was rendering to the judge. In North Bay Village, through this same Waxy Gordon, intimations that he made to the undercover agent and other kinds of things that occurred, police corruption in connection with off-loading narcotics and bringing in large quantities of narcotics were becoming factual or assumptions that were coming through this wiretap. Again, Waxy Gordon. So the FBI, ever expanding its inquiries, launched into that inquiry as well.

So now we have out of that first ILA situation, the dock situation, all the way to North Bay Village and police corruption and so forth as the FBI started to do that. This was also a part of the report.

So now we have involved in a big investigation, three-cornered investigation, undercover agents risking their lives daily, others brought in, support people for all those kinds of assignments, the people that were surrounding the investigation in every way, all of them involved in these very intricate goings-on within the wiretap world that had been established by the order of Judge Hastings.

At any rate, now what happens? As these were beginning to bear fruit, these investigations, one of the last progress reports on September 5th, 1985—by the way I should have mentioned all of this happened in 1985, four years after the last time that we had heard of Judge Hastings in a courtroom arena. At any rate, on September 5th, one of the progress reports was filed as to an extension because the U.S. Attorney had gained an extension of the wiretap capability because evidence kept cropping up and there was need for it. And Judge Hastings improved the expansion of and the continuation of the wiretap investigation.

What happens, then, after that final report where even more revelations are made and more people are put under surveillance, as it were, because of the activities of the FBI at that time. On September 6th, a Friday, 1985, at a hotel in Miami—you will hear the evidence explicitly brought forth. There is very little guessing you have to do about some of these things. On September the 6th, at a hotel conference in Miami, a municipal organization type of conference, there appeared Mayor Steve Clark, the one that you will hear was involved at that time, and Judge Hastings.

At that time, somewhere, at some point in that conference in the morning—that conference was September the 6th—Judge Hastings offered to Steve Clark the words that ultimately caused the crash of this investigation and the devastation of a great deal of effort and the further endangerment of lives of the people involved. He uttered words to the effect to Stephen Clark: You better watch out for Waxy Gordon. He's hot, or words to that effect, and he's using your name in Hialeah, or something like that, Hastings says to Clark.

It did not take long, and the evidence will disclose, for Steve Clark to get exercised about this revelation that he received from Judge Hastings. And the testimony will reveal to you firsthand that he immediately went to the phone, subject of a wiretap which was picked up, and contacted Waxy and said, "I've got to see you right away," and a meeting was planned and was executed for 11:30 at some club where Steve Clark intended to and did confront Waxy Gordon with the revelation.

Then with further wiretap investigations and gleanings that you will hear emanating from the witness chair, this began to fall apart because Waxy became worried about this zoning thing which had to do with the establishing of a new kind of game enterprise, electronic game enterprise, ostensibly set up by the FBI and they needed some zoning clearance, and they were trying to infiltrate that way. Waxy began to double back on that and find out what was going on, and pretty soon he became overly suspicious. One thing led to another; you know what the conclusion is, or we would not be here today. These investigations, these intricate webs of information that were being garnered by the FBI, working diligently with the U.S. Attorney's office, began to unravel. Immediately, they had to stop that ILA. There were people, thugs and other kinds of people with threats of lives and actually dead bodies involved in that investigation. It had to be cut off immediately.

The zoning thing, of course, by its own weight fell. The North Bay Village thing could proceed a little bit farther than anticipated because Kevin Gordon was not as intimately tied in with all of that as he was with the others. And so we had the spectacle, then, in all of this because of the wild statement of Hastings to Steve Clark. We had the makings of a tremendous catastrophe. It was a catastrophe. Luckily, it did not involve in the final analysis the loss of life or any maiming of anyone.

In any event, these are the kinds of things that you will be hearing in our grouping of witnesses that you will be hearing today. Ironically—and I have used that word and I overused it because this is replete with ironies—somewhere in these proceedings and in the record that you will have, that monstrous record that you will have to review, Judge Hastings himself made allusion, way before 1985, to the sensitive and worrisome duty of a Federal judge to monitor a wiretap and how deft and important that kind of duty on a Federal judge is. Uttered by the very same individual who in 1985 ruined an investigation and put at risk the lives of law enforcement officials and betrayed the trust and, as we will conclude from all of the evidence, caused a great danger to the system of judicial jurisprudence that we so cherish.

Thank you.

The CHAIRMAN. Thank you, Representative Gekas.

Yes, Representative Bryant?

Mr. BRYANT. Mr. Chairman, there is a pending vote, if we might be excused to cast it.

The CHAIRMAN. We will recess to provide time for the House members to vote.

[Recess.]

The CHAIRMAN. The committee will reconvene.

At this time, we would like to hear respondent's opening. I am informed that the respondent only took approximately 20 minutes, slightly less than 20 minutes of the hour that we had set aside for the original opening statements. So respondent has up to 40 minutes to spend at this point if he desires.

The VICE CHAIRMAN. An alternative interpretation, Mr. Chairman, would be that he can get it done in 10.

Mr. ANDERSON. That would be an alternative, yes. I suspect the truth, as often happens, will fall somewhere between.

Mr. Chairman, members of the committee, let me emphasize at the outset the points on which Representative Gekas and I agree. This Article could stand alone and, in the judge's view, should stand alone. This is the one Article upon instruction from my client we did not attack with the motion to dismiss. Representative Gekas is quite correct; Alcee Hastings has known from the time he assumed the bench that there are matters involving sensitive information and there can be damaging consequences from their disclosure. There is no dispute about that. There is no claim here of inadvertence. There is no claim of that. That is not an issue. We agree.

So, too, we also agree that Alcee Hastings learned about Kevin Gordon and his claims with respect to Mayor Clark through presentation of information in connection with the Title III application, the supporting affidavits, and the progress reports. Specifically what Alcee Hastings learned—and this is his only source; he makes no claim that he had any other source for this information. He specifically learned that Kevin Gordon's phone was being tapped. He learned through Johnny Rivero, the undercover agent's monitored conversations—they were not presented, but the affidavits were—that Kevin Gordon had, in dealing with an undercover agent, Mr. Rivero, said he could fix a zoning transaction in Hialeah. He learned that Rivero, in the presence of Kevin Gordon, had overheard a conversation between Mayor Stephen Clark and the undercover agent in which the mayor gave some assurance that a man, a councilman, a member of the City Council in Hialeah, Silvio Cardoso, would take care of it for them.

There was, indeed, evidence that the judge learned from those applications and only from those applications, that there was a legitimate and bona fide investigation into whether Kevin Gordon, Silvio Cardoso, Mayor Stephen Clark and others were engaged in corrupt zoning transactions in Hialeah, Florida. Judge Hastings makes no claim he did not learn it. Judge Hastings makes no claim he knew it anywhere else. He learned it there.

And although the quotations I think are slightly off, Representative Gekas is also quite correct. In the course of reviewing that with Mr. Martinez, the assistant United States Attorney and perhaps the FBI agents, Judge Hastings distinctly recalls and has said from the outset he remembers the name Gordon because of the nickname, "Waxy." And he remembers making statements to the agents: Waxy, just like the radio station. If he does not keep broadcasting, Mayor Clark is going to be in trouble. Now, he did not refer to him as Steve because he did not know him that well, but he did say that. There is no dispute about that.

We could quibble, but we will not, about the consequences of the disclosure, for Judge Hastings acknowledges that disclosures of this kind are inconsistent with the duties of a United States judge. Whether this brought a major investigation crashing down, it certainly was inconsistent with the role of the United States judge to make that kind of disclosure, and if he made it, on his instruction he stands before you and adjudicate him.

The only material fact in dispute in this case is: Did Alcee Hastings make that disclosure to Mayor Stephen Clark? But there is a related issue, and I agree again with Mr. Gekas. These cases have to be considered in tandem. For if, in fact, Alcee Hastings did not make the disclosure, where, then, did Mayor Clark get his information? For it is also clear that Mayor Clark did get confidential information that he did in some manner pass on to Kevin Gordon. How did this come to pass?

Now, let me review with you a couple of points that Mr. Gekas did not include but that I also think are beyond dispute. The first of those things that are beyond dispute is that Mayor Clark's repeated story cannot be true. I talk now in terms of time and physics and FBI intercepts. Mayor Clark has repeated before the grand jury, he has repeated in Atlanta before a judicial Investigating Committee, he has repeated before the House the same story.

On the morning of September 6, 1985, Mayor Clark, and as near as the registration records show, some 800 other people attended the opening session of the annual Metro Miami Action Plan Conference, a group established to promote racial harmony and ways of developing it in the Miami community. On that morning, Judge Alcee Hastings was scheduled to be the keynote speaker. According to the mayor, the judge delivered his rousing speech. The mayor was seated in the audience. According to the mayor's repeated story, after the speech Judge Hastings came down from the podium, into the audience, came up to the mayor and shook his hand, and said, "Mayor Clark, Kevin Gordon's using your name in Hialeah. He's hot. Stay away from him," and wandered off. That has been the mayor's story.

The program establishes that Alcee Hastings' speech was not scheduled to begin until 9:00 a.m. that morning. The evidence suggests—and, in fact, I think the probability will establish that the speech began at some time after 9:30. I take it that all of you are aware that sometimes scheduled events begin after the fact, very rarely before. The mayor's repeated story is: After the speech, after the disclosure, the mayor went back to his office. He called a man named Peter Ferguson, one of his political allies. He told Peter Ferguson, "Call Kevin Gordon. Get him down to the Marine Outboard Club for lunch. I want to talk to him." Perfectly consistent story, told repeatedly. That call, however, had to occur after the speech and after the mayor went back to his office.

Kevin Gordon's phone was monitored. The FBI had the wiretap that Alcee L. Hastings had authorized on the phone. The only problem with the mayor's story at this phase is that the FBI intercepted the call at 8:58 in the morning before the judge's speech began. So whatever disclosure may have been made to the mayor did not take place in the manner the mayor describes it. They have checked the pen registers; they have checked the agents; they have checked the time of the call. The call was at 8:58 in the morning, and the alleged disclosure could not have taken place before 9:30, and in all probability, in a matter of timing, would have had to have taken place at 10:15.

Eight hundred people were in that audience. Eight hundred people would have witnessed this transaction. Look at the House witness list. Are there any occurrence witnesses? No.

Now, you will hear Alcee Hastings testify on this matter, but it is not the first time Alcee Hastings has testified. He appeared before a committee of judges, another one of those special committees, in Atlanta. He got on the stand and under oath told his story. But he did more. He brought up—and this, again, is some years after the event—witnesses.

A woman you will hear was known as Flauren Joyette Royals—she is now Joyette Vickers—who was a staff person at the conference assigned to guide Judge Hastings. According to Judge Hastings, he was presiding over a jury trial, and he had left instructions with the staff that he had to get back to court to resume proceedings by 10:15. Ms. Vickers was the staff person assigned to aid Judge Hastings, to take care of his room and what have you. He asked her to "Have my car up there, tug on my coat, and get me out of here. I've got to get back to court."

Judge Hastings testified and recalled, Ms. Royals testified and recalled, that what she did is, when the time arrived, tugged on the coat and had made arrangements with hotel security to take him out of the back of the ballroom and through the service areas so that he could get to his car and get back to court. Two witnesses. Still, only two, and there were 800 people there.

One of the things the FBI in its diligent investigation did not discover, in addition to the names of the 800 people who were there, was the fact that photographs had been taken. So Judge Hastings produced in Atlanta, he produced in the House, photographs. The podium was like a tabletop podium set in front of your chairman. Extending out from that podium were two tables like the bench at which you sit. At that podium were a number of Miami dignitaries. The service entrances are behind. No more than could your chairman could Judge Hastings have walked down from the podium into the audience. He would have had to circle. Couldn't have happened the way the mayor says.

Pictures show Mayor Clark seated in the front row with people around him. Physically it could not have happened. Pragmatically it could not have happened without numbers of people observing it, and the people in that audience are not people—they are people who probably wouldn't remember this kind of thing, but you have the president of my own university sitting there. You have the former country manager, now mayor of Dade County, sitting on the dais. This is not a really tough investigation if we are searching for the truth, or it should not have been tough for the FBI back in September 1985.

That is the state of the evidence, and that is the state of the evidence that comes before you. Wherein comes the House theory? The House theory comes from Alcee Hastings. The FBI never discovered or developed any theory to get around this, but when Alcee Hastings was in Atlanta, he called, tried to bring up, ultimately submitted a letter, said, you know, but I did see the mayor with Monsignor Brian Walsh before the meeting. And Monsignor Walsh recalled it, and it is Alcee Hastings who said, "Yes, I saw him. We were having coffee outside before we went in."

So the mayor was confronted in the House. "Well, what about the possibility of his having told you before the speech?" "No. After the speech, Judge Hastings came down from the podium. I went back to my office, and I made the call." How strange.

We do know that Mayor Clark had information he should not have. On all of the evidence, whatever standard of proof you may apply, I do not think this one gets by a motion for a directed verdict or a motion for summary judgment. But we have a problem. The FBI and the Justice Department certified this to the judiciary. You will see memoranda from the FBI which, in effect, told the Justice Department: We don't care whether there's a crime here; prosecute that man. A certain amount of vindictiveness I think you will see in the language.

But, still, although it is not my burden, perhaps you will assume it because of your search for the truth. Someone told Mayor Clark something. And I do hope to the extent it can be found that you will discover it. And we have tried to put on our witness list people we have never spoken to, but let me tell you some of the leads that were available.

The original application to Judge Hastings was made on July 15, 1985; the alleged disclosure was made on September 6th. On July 24th, an FBI agent named Tom Dowd wrote a file memorandum. I forget whether it is on a 302 form, but it is an FBI file memorandum. In that memorandum, Agent Dowd recalled he had received a call from a man named Glenn Whittle. Glenn Whittle told Agent Dowd that a man named H. Paul Rico, who you have already seen, had told him that he should call Agent Dowd to inquire whether Mayor Clark and Pete Ferguson were under investigation.

Now, Glenn Whittle, again, I believe it will come out, is one of the mayor's political allies. I am not sure what his role is in all that. H. Paul Rico, whom you have seen, is a retired FBI agent who is a director at the Miami Jai Alai Association. Just happenstance, among the many FBI family and former FBI agents employed at

Miami Jai Alai was Agent Tom Dowd's wife. Among the other anomalies is the fact that Mayor Clark, who was—perhaps still is—was a bit of an FBI groupie. He married Tom Dowd and his wife on the golf course one afternoon, so they were making inquiry about the man who married you.

And there is another anomaly. Mayor Clark has testified that among his golfing partners were FBI agents. Who? Anthony Amoroso. Supervising Agent Anthony Amoroso was his regular golfing buddy. And you will hear, and you have had in our prior submissions, Agent Mazzella's telexes concerning this matter, one of which discloses that the FBI, that the Justice Department had approved an indictment of Mayor Clark at the time that they hauled him into the net.

Now, I do not know what the indictment was. I have had some explanation, but I have not had a chance to focus on Agent Mazzella and discuss that memo with him. I make only this point: On all of the direct evidence, the FBI knew pretty close to the outset that the mayor's story as he recounted it could not be true. At that time, the FBI could simply have discovered that there was a staff, that there were some 800 people present in the room. Had they asked, they would have discovered there were pictures. They could have gone at a time when memories were fresh and said, "Anyone see this?" They could have interviewed Ms. Royals, now Vickers, but they did not. They could have interviewed people to try and discover what happened.

So excited were they by the mayor's statement, Alcee Hastings, nothing happened. Ultimately, the memo of Agent Dowd to the file was produced. But, in fact, as near as I can tell, former Judge Smith who was the special investigator for the judicial committee is the first person who ever went out to talk to Tom Dowd, the first person who ever went out to talk to Glenn Whittle, the first person who ever went out to talk to H. Paul Rico, the first person who ever went out to talk to Pete Ferguson.

What is going on here? Representative Gekas presents our law enforcement agents as searchers for the truth engaged in a diligent investigation. Why when it is Alcee Hastings is the investigation diligent? If the leak that put William Dredge's name in jeopardy was so significant—and yet I cannot read the final report—why is this man before you without our being able to know who did that?

You will hear evidence that the fact that Mayor Clark had testified before the grand jury was in the Miami Herald. I do not know that—I take it all of us would appreciate the fact grand jury stuff is pretty secret. It is not supposed to be leaked. That appears in the Miami Herald and casts vilification on this man. In your search for truth, find out what happened about that leak? Ask yourself. In my view, this relates back. It is, as Representative Gekas says, a part of a pattern. Something is wrong.

Let me close my opening on this point with two reminders. In an earlier age, the chairman of the managers and the chairman of the House Judiciary Committee, Sommers, in a closing in a case—I think it was Judge Ritter—made the point. The first thing we take to be our constitutional duty is to protect judges from those who would make them afraid. Protect this man from those who would make him afraid, and inquire, search out the truth as you were before on this one.

Let me then also say, at an earlier time, I think the first deposition I appeared, I heard Senator Specter deliver the prescribed oath for an impeachment. I think I mentioned that there was an oath written by Carl Sandburg, which I think is appropriate in this case, so let me share it with you, and I will leave.

The question to the witness:

> Do you solemnly swear before the everlasting God that the testimony you are about to give in this cause shall be the truth, the whole truth, and nothing but the truth?

The witness's response:

> No, I don't. I can tell you what I saw and what I heard, and I will swear to that by the everlasting God. But the more I study about it, the more sure I am that nobody but the ever-living God knows the whole truth.

And if you summon Christ as a witness in this case, what he would tell you would burn your insides with the pity and the mystery of it. You are engaged in a search for truth. I ask you to consider the possibility that you may not be able to discover it from witnesses who honestly only tell you what they recall or what they heard and they saw. But I invite you in Article XVI to search for that truth. We have called all we can think of of the people. There probably are others. Find the truth and send that man back to the bench.

The CHAIRMAN. Thank you, Mr. Anderson.

At this point, the House can call its first witness on this portion of its case.

Mr. BRYANT. Mr. Chairman, before calling our first witness, the managers wish to alert the committee to the fact that the House Subcommittee on Criminal Justice took precautions in connection with the consideration of this phase of its impeachment inquiry to protect the privacy of individuals. We tried to avoid unnecessary disclosure in open sessions of the identities of individuals who were not central to an understanding of this matter, and we also redacted materials included in the appendix volume of electronic surveillance prior to publication. The subcommittee believed that these steps were justified because of the sensitive nature of electronic surveillance information.

We wish to formally bring this matter to the attention of the Impeachment Trial Committee before beginning this phase of the case to give this committee the opportunity, if it chooses, to impose restrictions on public disclosure in a timely fashion. We recognize this is a matter within the control of this committee. We would simply point out that with regard to printed data about the factual disclosures, particularly with regard to the surveillance that took place in this case, the House subcommittee chose to redact the publicly issued documents in order to protect the identities of people who were in no way related to the central allegations here. Second, we made an effort not to unnecessarily mention names that are not really central to an understanding of the facts.

We simply want to point out to the committee that there is the possibility that people could be unnecessarily prejudiced, and it might be in the interest of the public and their interest for the committee to take notice of that in advance.

The **Chairman**. Let me ask counsel, do you have a specific set of restrictions that you would suggest that the committee impose at this point? Any kind of written description of what restrictions you are suggesting that the committee consider?

Mr. **Bryant**. About all that we can suggest with regard to specifics would be perhaps a strong suggestion to both the House and the respondent that we not unnecessarily draw out of witnesses the mention of names which are not necessary to explaining this case. And, second, that in the printing of data—that is, printing of information or a record by the committee, special attention be given to the possibility of redacting or eliminating names that are mentioned along the way that are not necessary to anyone's understanding.

The **Chairman**. Mr. Anderson, did you have a comment or response?

Mr. **Anderson**. Just briefly, Mr. Chairman.

I certainly am not interested in eliciting anything that I do not think is necessary. I have no need to cause unnecessary embarrassment.

I would remind, although they seem to have been following it, whatever the *sui generis* nature, that this is the respondent. He is accused. A public trial and the right to confront his accusers fully is there.

In terms of redactions, I am not aware of anything in this that could be other than stale information. My understanding is that the undercover informant, Johnny Rivero, who testified in Atlanta is dead. I have not seen the death certificate yet. Kevin Gordon is, I think, quite clearly dead. The name of the agent, the other undercover, has been publicly disclosed, and I take it he is back at his duties.

I am just not sure what other names are concerned. I have no desire to needlessly do this. I think this reveals a slice of Miami, but I suspect if the committee were to compare the articles in the Miami Herald containing early 1985 disclosure of FBI zoning corruption investigations in Hialeah, you would find that a lot of the same names that are in the sealed affidavits were all over the community before.

I really am at a loss. I do not know what is—I do not want to agree to any redaction. If it goes into evidence, it is public evidence. If someone can come to me and say, look, do you really need that, I will try and be reasonable about it.

The **Chairman**. Let me just suggest that I think it is very difficult for the committee to rule on this kind of a suggestion in a very general sense. I think what we would need is to further investigate with the House managers precisely which names and which information they felt it was inappropriate for us to include in this record and unnecessary for us to, and then consider what the position of respondent's counsel is to that. Maybe during the next break we could pursue that. Our counsel could visit with both counsel for the House and counsel for respondent and see if there is some agreement that could be reached.

Mr. **Bryant**. That is acceptable.

The **CHAIRMAN**. Would the House go forward with their first witness, please?

Mr. **BRYANT**. The House calls Roberto Martinez.

[Pause.]

The **CHAIRMAN**. Would you raise your right hand, Mr. Martinez? Do you, Roberto Martinez, swear and affirm that the evidence you shall give in the case now pending between the United States and Judge Alcee L. Hastings shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. **MARTINEZ**. I do.

The **CHAIRMAN**. Please be seated.

Mr. **GEKAS**. Mr. Chairman and members of the committee.

Please state your full name for the record.

TESTIMONY OF ROBERTO MARTINEZ

DIRECT EXAMINATION

Mr. **MARTINEZ**. My name is Roberto Martinez.

Mr. **GEKAS**. And where do you reside?

Mr. **MARTINEZ**. In Miami, Florida.

Mr. **GEKAS**. What is your profession?

Mr. **MARTINEZ**. I'm a lawyer.

Mr. **GEKAS**. And how long have you been practicing?

Mr. **MARTINEZ**. I've been practicing law since 1980.

Mr. **GEKAS**. In 1985, what was your occupation?

Mr. **MARTINEZ**. Congressman, at that time, I was an Assistant United States Attorney in the Southern District of Florida in Miami.

Mr. **GEKAS**. And what was the specific assignment within the U.S. Attorney's office that you were executing?

Mr. **MARTINEZ**. At that particular point in time, I was working in the political corruption section of the U.S. Attorney's Office in Miami, and my responsibilities primarily entailed the investigation and prosecution of corruption matters, although I also had a limited amount of responsibility in the area of narcotics prosecutions.

Mr. **GEKAS**. With respect to your activities in 1985, tell the chairman and the members of the committee what main investigation was undergone at that time which has reference to the eventual arrival at this stage?

Mr. **MARTINEZ**. In 1985, I was the Assistant United States Attorney primarily responsible for three investigations that were occurring in the beginning phases of 1985: an investigation involving corruption, allegations of corruption at the waterfront at the port of Miami; an investigation into allegations of corruption involving zoning practices in the city of Hialeah; and an investigation involving allegations of police corruption in the municipality or North Bay Village.

Mr. **GEKAS**. Which came first in point of time at the focus?

Mr. **MARTINEZ**. The investigation into corruption at the waterfront, the investigation of the ILA local at the waterfront began in approximately the fall of 1984.

Mr. **GEKAS**. And what was the target there? What were you trying to determine?

Mr. **Martinez.** The FBI had received complaints of corrupt practices at the port in connection with employees, union members having to give kickbacks in order to gain employment at the port of Miami. And it also involved allegations of some form of narcotics trafficking at the port of Miami.

Mr. **Gekas.** What did you uncover as to the value of those jobs that would lead to this kind of enterprise?

Mr. **Martinez.** It was our understanding that it was of a certain amount of value to be a member of that particular union, ILA Local 1922, because that was a type of employment that had its benefits. Also, it gave that person access to the port of Miami in the event that that particular individual wanted to use the port for certain type of illegal activities.

Mr. **Gekas.** All right. Had you had any record in your files of previous investigations in that arena?

Mr. **Martinez.** Well, the investigation that we were conducting at the waterfront was somewhat of a continuation, a spinoff, but many years removed, of a very successful investigation that occurred in the 1970's, the mid- to late 1970's. That investigation went by the code name of UNIRAC, union racketeering. And the people that we were investigating at this point in time in the beginning of 1985 were people that were somehow related to the targets of that investigation; either they had familial relations or they were business associates of some of those same people.

Mr. **Gekas.** How would you describe the nature and text of the people who were gathered in this activity?

Mr. **Martinez.** Some of the targets of that investigation, the waterfront investigation, involved members, alleged members of organized crime groups.

Mr. **Gekas.** OK. What technique was adopted by your office and the FBI to proceed with the investigation, as you termed it, of the ILA?

Mr. **Martinez.** Originally, it started by making attempted undercover contacts between an informant and the union. Later on, it was determined that a more productive manner of proceeding would be through the use of a wiretap, a Title III intercept device.

Mr. **Gekas.** Who was the original confidential informant?

Mr. **Martinez.** The original confidential informant that we were using at that time in 1985 was a man named Johnny Rivero, who has since passed away.

Mr. **Gekas.** All right. Was he reporting back to you on the activities, et cetera?

Mr. **Martinez.** Congressman, he was reporting directly to Special Agent Geoffrey Santini and sometimes to Special Agent Mazzella, and there were times at which I also met with him. But the primary control agent, what I would call a control agent, of Johnny Rivero was Special Agent Geoff Santini.

Mr. **Gekas.** All right. Now, I want to come back to some of your descriptions, but I would like to keep this in a chronological pattern, if I could. As a result, then, of what you were uncovering through the work of Johnny Rivero and what was occurring at the docks, you said you decided to go to a wiretap; is that correct?

Mr. **Martinez.** That's correct.

Mr. **Gekas**. So what then became your duty and what did you do?

Mr. **Martinez**. With regards to the wiretap?

Mr. **Gekas**. Yes.

Mr. **Martinez**. Well, in connection with the wiretap, it was my primary responsibility to—I was the Assistant United States Attorney at the U.S. Attorney's Office at that time that was primarily responsible for the preparation and submission of the application, the affidavit, and the related wiretap papers to the judge who would authorize the wiretap.

Mr. **Gekas**. I have represented to the chairman and to the members of the committee in my opening that that original reason for your approach to the judge, later through what was uncovered with the wiretap, it expanded into these other activities which you describe. So now jumping back——

Mr. **Martinez**. All right.

Mr. **Gekas** [continuing]. I would ask you briefly to describe what happened once you first got evidence of the events in Hialeah.

Mr. **Martinez**. Well, just so that I can put this in proper context, the investigation of Hialeah, of corruption in Hialeah, the primary investigation of corruption in Hialeah began some time around February 1985, and it was conducted in what we would refer to as an overt manner. That would be conducting interviews and also grand jury investigation. It was determined that that was not a very productive way of proceeding. So for several months, we pulled out of Hialeah—that is, the FBI withdrew its physical presence from Hialeah—to give the impression to the politicians, the political figures in Hialeah, that law enforcement had forgotten and had stopped investigating in Hialeah.

In fact, what we were doing is we were preparing an undercover investigation utilizing an amusement project named Photon, P-h-o-t-o-n. And later on, we decided to incorporate that investigation into an investigation that we were having into the waterfront because we used the same target—an individual by the name of Kevin Gordon, Waxy Gordon.

Mr. **Gekas**. All right. Tell the members of the committee and the chairman a little bit more about Photon and what it was or purported to be.

Mr. **Martinez**. Photon was an amusement project. It was sort of a Star Wars, laser tag type of project that would require a building with substantial indoor space—perhaps somewhat like this building, like this room. And the project, because it used tag, laser tag and electronic gadgetry, the FBI had ascertained that that type of gadgetry required certain permits and licenses to be obtained from the municipality.

The FBI had made a determination from talking to the actual proprietors of the Photon project that that would be an ideal project to use in an undercover scenario, in particular with regards to the problems that we were looking at in Hialeah because the allegations that we had received was that the political officials, some of them, were taking payoffs or requiring certain types of benefits in connecting with granting permits, licenses, and zoning variances.

Mr. **Gekas**. So who created this enterprise of Photon?

Mr. **Martinez**. Well, Photon is a business. It's a legitimate business that exists.

Mr. **Gekas**. I mean for Hialeah. Who made the moves to try to implant it in Hialeah?

Mr. **Martinez**. The FBI and the—the FBI with the consent of the U.S. Attorney's Office, but it was the FBI's project to use that as an investigative technique that we thought would be highly successful.

Mr. **Gekas**. All right. What personnel and how was that personnel to be used?

Mr. **Martinez**. Well, originally, when we began to implement the Photon undercover scenario, we—by "we," I mean the law enforcement authorities—the FBI suggested to Johnny Rivero to propose that project to Mr. Gordon to see whether Mr. Gordon could find a location in Hialeah that would be suitable for that type of an amusement project. And later on, Mr. Rivero introduced an undercover agent by the name of Dick Giannotti, known as Gino, to Mr. Gordon, and they had some further meetings in connection with trying to find the proper location for the project.

Mr. **Gekas**. And what was Gino pretending to be?

Mr. **Martinez**. Gino was pretending to be a consultant, a developer consultant from Houston who was coming over to Dade County on behalf of his group that he represented, to make sure that prior to the commitment of the investment in the Photon project the political problems—the licenses and the permits—that those problems would be taken care of before his group would make the investment.

Mr. **Gekas**. All right. Now, let's return to your outline and report to the members of the committee of the third investigation to which you alluded at the opening part.

Mr. **Martinez**. The third investigation was an investigation into allegations of corruption by members of the North Bay Village Police Department. The North Bay Village Police Department is a municipality located between Miami, north Miami and Miami Beach. It is a small police force. We had received evidence from Mr. Stephen Nahay—this is a person who came up during the course of this—these investigations. Stephen Nahay was a person who was self-described to be a member of La Cosa Nostra or an associate of organized crime. And he had indicated to Mr. Rivero that he was aware of corrupt police officers of the city of North Bay Village. Later on, we obtained further evidence to that effect.

A determination was then made, Congressman, to target that problem, and later on in the month—I'm not exactly sure when we actually began to implement it concretely, but I would say it was sometime in late July, very late July, that certain steps were set in motion to actually get at the corrupt police officers.

Mr. **Gekas**. Was undercover capacity used there?

Mr. **Martinez**. Yes. The project that was utilized was a project whereby Johnny Rivero introduced a special agent by the name of Dan Kingston in an undercover capacity to Mr. Stephen Nahay. And Mr. Kingston was posing as a fellow who came down from, I think it was Mississippi for the specific purpose of running some loads of cocaine through south Florida. And we—Mr. Kingston was put in contact with Mr. Nahay, and Mr. Kingston advised Mr.

Nahay that his people wanted to do this, this off-load operation, but the only way they were willing to do it was if they had the assurances that the matter was going to be protected by police officers.

So Mr. Kingston during that scenario was operating, yes, in an undercover capacity, and there were also other undercover agents that were utilized later on when the phony off-loads of cocaine took place.

Mr. **Martinez.** All right. Reference has been made by yourself and with various other pieces of evidence and in the openings, really, to an individual named Kevin Gordon. Please tell us what he was. Who was he, first?

Mr. **Martinez.** Kevin Gordon was introduced to Johnny Rivero I believe in late April 1985 by Stephen Nahay. And at that time, we ascertained that Mr. Gordon, also known as Waxy, was a zoning inspector—or chief of code enforcement, I believe was his title—for the city of Surfside. This is a municipality in Miami Beach.

Mr. **Gekas.** How was he connected to the people involved in the docks matter?

Mr. **Martinez.** Mr. Gordon told Mr. Rivero that he had contacts, that he had associates, friends of his, who he knew at the waterfront. One of the first references that he made to was a man by the name of Peter Ferguson who was then—I'm not sure what he is now but was then the campaign manager for Mayor Clark, Steve Clark. And he reached out originally to Mr. Ferguson to assist Mr. Rivero into getting into the union, into the waterfront union.

Mr. **Gekas.** And what was his, Waxy's connection in the Hialeah arena?

Mr. **Martinez.** The connections in the Hialeah arena developed later on. Waxy had told Mr. Rivero during the course of the investigation as it unfolded—and we were able to see this in action through some of the debriefings of Mr. Rivero and some of the surveillance—that he could obtain special permits in zoning matters because of his influence.

Later on, we decided that because of what Waxy had revealed to us that perhaps the most fruitful way of doing the Hialeah investigation would be to ask Waxy to find the location for us. At some point in time, and we're talking much later on down the road, some time in—it's a date in August. I will have to refresh my notes to give you the exact date—Waxy introduced Mr. Rivero to Mayor Clark.

Mayor Clark, at that point in time, made a reference that if there was a point in Hialeah, you could contact a certain councilman, that is a fellow who I know. So that is how that scenario developed, but that was later on in the month of August.

Mr. **Gekas.** And Waxy's connection in North Bay Village and that part of the scene?

Mr. **Martinez.** Waxy—it became apparent to us that Waxy also was aware that there were corrupt police officers at North Bay Village. And we, because of our interest in investigating that problem, I am not sure what would be the most productive avenue, whether it would be through Stephen Nahay or Kevin Gordon, we explored both avenues.

Mr. Gordon, for a while, attempted to make sure that he could get us the proper police protection to do the narcotic off-loads. And in fact, he introduced us to several people in order to reach those objectives. But it was determined, later on, that we would be more successful in getting at the corrupt police officers by using Stephen Nahay, because Mr. Nahay himself—and we saw this—could go up to the police officers himself directly and ask them to do the protection, whereas, Mr. Gordon would always have to deal through a third party.

So, for purposes of effectiveness, we decided that with regards to investigating police corruption in North Bay Village, that we would follow the avenue of using Mr. Nahay.

Mr. GEKAS. Now, let us return to the important aspect of the wire tapping portion of your investigation. When was it that your wire tap request began to be formulated?

Mr. MARTINEZ. Sometime in the month of June, we began to put together the extensive paperwork that is required to submit the application and the affidavit to the authorizing judge.

Mr. GEKAS. I think it is important, although many of the members of the Senate are familiar with the process, that you briefly outline what you would have had to do and what really every U.S. Attorney doing that task has to do to prepare for this application.

Mr. MARTINEZ. In order to get a wire tap authorization, the Assistant U.S. Attorney, along with the agent, has to prepare a tremendous amount of paperwork with a lot of evidence that forms probable cause to allow the authorizing judge to give you the authorization to make the interception.

What we did in this particular case—and it was no different than I had done in the other cases—was to prepare, put together the affidavit for the agency, and I also put together my application and the required orders.

At some point in time, later on in the month of July, Congressman, after we had obtained the authorization from the Department of Justice, that we got I think the first time from Assistant Attorney General Stephen Trott, then we went over to see Judge Hastings, to present to him the application.

Mr. GEKAS. You are intimating that ultimately the Attorney General of the United States or his representative has to be in the line of authorization to conduct a wire tap. Is that correct?

Mr. MARTINEZ. That is correct. It's a—the whole process of getting authorization to do a wire tap, apart from meeting the statutory requirements of probable cause, and they are extensive, are very rigorous. Not only do you have to satisfy a statute, but you also have to satisfy the Department of Justice, the FBI, and then eventually you get all the authorizations in place, and then the Assistant U.S. Attorney goes with the case agent to the particular district judge.

Mr. GEKAS. When it came time for you to go to court to seek out a judge and the authorization of that judge, to which court house did you go?

Mr. MARTINEZ. We went to the Federal Court House, of course.

Mr. GEKAS. And what judge was assigned then to entertain your application?

Mr. **Martinez**. In the month of July, 1985, Judge Alcee Hastings was the duty judge during that month, and the wiretap papers were presented to him as the duty judge for the month of July.

Mr. **Gekas**. All right. Now, we have Exhibits 160, 161, 162, 163, 164, 165, and 166, which we want to put in front of you for further explanation to the committee of the process.

All right. Now, tell us what House Exhibit 160 contains?

Mr. **Martinez**. 160 is the application submitted by the Assistant United States Attorney to the district court judge in order to obtain the authorization for the wiretap.

Mr. **Gekas**. All right. What is 161?

Mr. **Martinez**. 161 was the affidavit, in fact, of Special Agent Santini.

Mr. **Gekas**. All right. 162.

Mr. **Martinez**. 162 is the sealing order to seal all the papers that are being submitted at that point in time. the affidavit and the application and the other ones which I am about to identify.

Mr. **Gekas**. And 163.

Mr. **Martinez**. 163 is the actual order.

Mr. **Gekas**. Signed by whom?

Mr. **Martinez**. It is signed by U.S. District Court Judge Alcee Hastings, authorizing the interception of wire communications that was applied for.

Mr. **Gekas**. And 164.

Mr. **Martinez**. 164 is a redacted order that I prepared. This is the order that is also signed by Judge Hastings and delivered to the telephone company. It is the same as the other order, except that it doesn't have any information about the case. It only sets forth which facilities we have been given authorization to intercept.

Mr. **Gekas**. Does the judge sign that as well?

Mr. **Martinez**. Yes, he does.

Mr. **Gekas**. And did he in this case?

Mr. **Martinez**. Yes, he did.

Mr. **Gekas**. 165 is what?

Mr. **Martinez**. 165 is a copy of the instructions, additional instructions provided to the agents by me in connection with how to monitor the wire intercepts.

Mr. **Gekas**. What name is given to those kinds of instructions, special phraseology?

Mr. **Martinez**. They are referred to as the minimization instructions.

Mr. **Gekas**. Explain to the committee briefly what that does?

Mr. **Martinez**. We are given authorization to intercept communications over certain telephone facilities of the communications of certain individuals, and any conversations that do not pertain to those people as to those authorized crimes, we have to stop listening to, and that whole process is called minimization. It is a way in which we minimize the interceptions.

Mr. **Gekas**. 166.

Mr. **Martinez**. 166 is a copy of the order authorizing the extension of the pen register devices on the subject telephones.

Mr. **Gekas**. Explain to the committee very briefly the pen register nomenclature and what it does.

Mr. **Martinez**. A pen register device is a device that registers the numbers of the outgoing phone conversations from a particular telephone facility.

Mr. **Gekas**. All right. Now, let's get back to a little more explicit information on these exhibits.

Exhibit 160, which you have identified, the original application, did it have exhibits of its own attached to that original application?

Mr. **Martinez**. 160 had two exhibits. It had the order that was entered into by Attorney General Meese in 1985 specifying which assistant attorney generals could authorize applications for wire tap in the event of his unavailability.

Exhibit B was the specific authorization from that particular assistant attorney general, in this case, Stephen Trott, authorizing us to present to a district court judge the application for the interceptions in this case.

Mr. **Gekas**. All right. Looking back at Exhibit 161, what is written on the bottom of the first page of that exhibit?

Mr. **Martinez**. Well——

Mr. **Gekas**. Exhibit C, what does that say?

Mr. **Martinez**. OK. Exhibit C would be the C exhibit to the application, and that would be the application, in other words, A would be the order from the attorney general, B would be the specific authorization from Assistant Attorney General Stephen Trott, Exhibit C to the application would be the affidavit of Special Agent Geoffrey Santini.

Mr. **Gekas**. You have identified 162 as a sealing order.

Real quickly, what is a sealing order for the record?

Mr. **Martinez**. A sealing order is an order signed by the district court judge who has the responsibility over the wiretap sealing all of the paperwork in connection with the application for that wire tap authorization. It seals everything.

Mr. **Gekas**. And you have described 166 as the extension of the pen register.

Mr. **Martinez**. That's correct.

Mr. **Gekas**. All right. With the chair's permission, I offer 160, 161, 162, 163, 164, 165, and 166 into evidence.

Judge **Hastings**. No objection, Mr. Chairman.

The **Chairman**. Those exhibits will be admitted.

[The documents referred to were marked House Exhibit Nos. 160, 161, 162, 163, 164, 165, and 166, and received in evidence.]

Mr. **Gekas**. After the initial application, we want to inform the chair, that there is another vote on the floor of the House, which has already begun the 15 minute period. So this might be a good place to stop again.

The **Chairman**. We will take a recess at this point while the House managers vote.

[Short recess.]

The **Chairman**. The committee will reconvene.

Are the House managers ready to continue with the direct examination of the witness?

Mr. **Bryant**. We are summoning Representative Gekas from one of the upstairs rooms, Mr. Chairman.

[Pause.]

The **Chairman**. Representative Bryant, we do not seem to have either the witness or the counsel who was examining him present.

What do you suggest as a course of action for the committee? Is there any other business we can usefully transact?

Mr. **Bryant**. Let me get some information here. Just a moment, Mr. Chairman.

They are on their way up right now. They are apparently on the fourth floor.

The **Chairman**. Here they are.

Mr. **Gekas**. My apologies, Mr. Chairman.

The **Chairman**. In the Senate when people say they are on their way, that may mean from Phoenix.

If you would go ahead and continue with your direct examination?

Mr. **Gekas**. Yes. Thank you, Mr. Chairman.

After the initial application as you have testified, what is the and was the procedures at that time with regard to informing the judge of the progress of the investigation?

Mr. **Martinez**. In this particular case, Mr. Congressman, as in any other case, the procedure that is followed is the submission of a progress report to the authorizing judge periodically.

Mr. **Gekas**. And who prepares that?

Mr. **Martinez**. I prepare that based upon information provided to me by the case agent, in this case who was Special Agent Geoff Santini.

Mr. **Gekas**. All right. And how would the judge receive you for the purpose of a progress report?

Mr. **Martinez**. In this particular case, and it was the same practice that I had in other cases, I would go to his honor's chambers and I would meet with him personally, if I could, and I would hand deliver the original progress report to the court, and he would sign it in my presence, and then I would take that report and he would also sign the sealing order that goes on top of the report, and I would take that report and the sealing order to his clerk and I would give it to the clerk. I would ask her to provide me with a certified copy of the papers. I would take the certified copies with me back to the office, and I would leave the original papers with the clerk.

That was the customary procedure. There were deviations, but for the most part, that was the practice.

Mr. **Gekas**. All right. I am going to show you House Exhibits 167 through 171 and ask you to identify them. 167 is what?

Mr. **Martinez**. Exhibit 167, the first page is the sealing order for the progress report dated July 22, 1985. Attached to that are 16 pages, which comprise the first progress report dated July 22, 1985.

Mr. **Gekas**. All right. We will get back to the content later. 168?

Mr. **Martinez**. 168, the first page is the sealing order for the second progress report signed on July 29, 1985, by Judge Hastings, and then the next 25 pages are—comprise the second progress report dated July 29, 1985, and that report is also signed by myself and Judge Hastings.

Mr. **Gekas**. 169?

Mr. **Martinez**. The first page of 169 is the sealing order signed on August 5, 1985, by Judge Hastings. Attached to that are 15 pages which comprise the third progress report dated August 5, 1985. It is signed by myself and Judge Hastings.

Mr. GEKAS. And 170?

Mr. MARTINEZ. 170, the first page is the sealing order, and I believe all these are copies. The first page is the sealing order. It is dated August 13, 1985. It is signed by Judge Hastings. The attached 14 pages comprise the fourth progress report dated August 12, 1985. On the last page it is signed by Judge Hastings on August 13th, and it is also signed by Jon May. Jon May was an Assistant U.S. Attorney at the U.S. Attorney's Office in 1985.

Senator RUDMAN. Mr. Chairman.

The CHAIRMAN. Senator Rudman.

Senator RUDMAN. Let me interrupt counsel at this point.

If I understood counsel's opening for Judge Hastings, there is no denial of the fact, it is a matter of public record, that Judge Hastings was the presiding judge, that all of these reports were furnished to him, that he gave the sealing orders. This committee is very familiar with this whole process. I mean, we have got a lot to do here and frankly if the two counsel to stipulate to much of this, and if the witness is going to testify to what the judge said or what he did or his demeanor, I would like to hear that. But quite frankly, with the schedule we have between now and the 4th of August, I would like to see some of this kind of examination shortened if counsel can do it.

Mr. GEKAS. Yes. And if I might say so——

The CHAIRMAN. Senator Gekas.

Mr. GEKAS. That the precise reason that we are going through all of this is to then excerpt through the testimony of Mr. Martinez those parts of these progress reports that had direct reference to Mayor Clark, to the characters in this case.

And I am willing to skip right to that and go right to those references if the Respondent will stipulate that all the things that we are drawing these from are part of the record.

Senator RUDMAN. That is precisely my request.

Mr. GEKAS. I want to do that.

Senator RUDMAN. If counsel for Judge Hastings, or the judge himself acting as his own counsel, would like to comment on this, we can sure save a great deal of time and get into what the important part of this testimony is.

Judge HASTINGS. Through 184, Senator, we would so stipulate.

The CHAIRMAN. That is through Exhibit 184.

Mr. GEKAS. OK. Then we will simply supply the witness with those exhibits and we will go right to those references that has to do with the people who played a role in this matter.

Now, we want to go right to where in these documents there is reference made to Stephen Clark. Who was Stephen—or is Stephen Clark?

Mr. MARTINEZ. In 1985, Stephen Clark was the Mayor of Dade County. He is still the Mayor of Dade County.

Mr. GEKAS. All right. Which of these documents make reference to Mayor Clark?

Mr. MARTINEZ. If I may, I made a note of that.

Mr. GEKAS. All right. Good. That will shortcut things.

Did you make a note as to what was said?

Mr. Martinez. My note refers to the particular document, and if I could go to that document I can——

Mr. Gekas. You can leap right to that document; 161 first. Tell us what in 161 is the reference to Mayor Clark?

Mr. Martinez. 161 is the first affidavit submitted. It is sworn to by Special Agent Geoff Santini on page 23, footnote seven. At this point in the investigation, Johnny Rivero had been introduced to Kevin Waxy Gordon, and Mr. Gordon indicated to Mr. Rivero that he would try to help him get on the docks, become a member of the union, and he would do so by calling a man named Peter Ferguson. And he in fact placed a phone call in Mr. Rivero's presence to the man who he claimed he was calling, Peter Ferguson.

Mr. Gekas. And who is Peter Ferguson?

Mr. Martinez. The footnote identifies Mr. Ferguson as being the at that time the campaign manager for Dade County Mayor, Steve Clark, and also identifies Mr. Ferguson as being what we were told then the director for fiscal operations at the Port of Miami. That's—I believe that happens to be the first reference to Mayor Clark.

Mr. Gekas. All right. Did you and Judge Hastings have any conversation about the contents of that particular progress report or Exhibit 161?

Mr. Martinez. Exhibit 161 is an affidavit. It was—I believe that a copy of this document was given to Judge Hastings by myself a few days prior to the date that he signed it on July 15th, because it is a long document I wanted him to have access to it so that he could read it prior to our visit to his office on July 15th.

Mr. Gekas. What did the judge say to you at the time of the review of this Exhibit 161?

Mr. Martinez. On July 15th, when we went to his office to swear to these documents and have it signed, the only comment that I recall—and I am sure there was friendly conversation—but besides those conversations, the only comment that I can recall was Judge Hastings at that time indicated a concern about our interception of the conversations at the phones at the city of Surfside city hall, and we indicated to his honor that we were going to be taking—the FBI was going to be taking special precautions to make sure that we were particularly sensitive to those particular telephone facilities.

Mr. Gekas. All right. Now, what was the next document presented to Judge Hastings which referred to Mayor Clark according to your list and your notes?

Mr. Martinez. According to my notes, the next reference to Mayor Clark would be contained in the second progress report dated July 29, 1985. That would be Exhibit Number 168.

Mr. Gekas. All right.

Mr. Martinez. And that would be found on page 13.

Mr. Gekas. All right. And what reference is contained in that exhibit that relates to the individuals we have identified?

Mr. Martinez. Just for the record, Congressman, the first reference, the date of that reference was April 25th. The date of the next reference in Exhibit 168 is July 16th. It is found in footnote number three. Now, this is the progress report that was given to his honor. And there is a reference in here—this is the first—this footnote explains what we were doing in the investigation, apart from the intercepted phone calls, and it explains that Johnny Rivero provided to Mr. Gordon a video tape of the Photon amusement project that we were using in the highly undercover investigation.

The footnote goes on to explain that after Gordon received the video tape, Gordon stated that he could handle any zoning or licensing problems, and he goes on to state that a good location for the project would be in the vicinity of an establishment by the name of Diamonds, and he further stated that Diamonds was a novelty place, the biggest in the south, that quote, "We cheated a little to get him in there to begin with. He's a friend of the mayor's."

Mr. **Gekas**. All right. Did you present the progress report of 168 to the judge in the course of action?

Mr. **Martinez**. I believe that I did.

Mr. **Gekas**. All right. What was the next document presented to Judge Hastings, which referred to any of the individuals?

Mr. **Martinez**. If I might explain something, though, with regards to that reference to the mayor, there was no reference specifically to Mayor Clark in that second progress report, but the only mayor that we were aware of that he was associated with was Mayor Clark.

Now, the next reference to my knowledge, would be contained in the fourth progress report, which is Exhibit 170. And——

Mr. **Gekas**. Excuse me. Before you get to that, what special pains did you take when you were presenting 169 to the—168 to the judge to point out certain things to him?

Mr. **Martinez**. All right. I am reviewing a document here which is the FBI 302 of my interview to refresh my recollection. And I remember that when I showed Judge Hastings that document, which is Exhibit 168, I was with him in his chambers, and I wanted to show him page 13, because page 13 contains evidence of other criminal activity apart from those which were specifically authorized in the wire tap order. And the prosecutor has that responsibility, to bring those matters to the court's attention because it goes beyond the court's order, and the court has to be aware of that, and he implicitly authorizes you to continue to do so if he doesn't say anything to the contrary.

So it's my responsibility to bring those matters to his attention, and that's what I wanted to do. Page 13, footnote three and footnote four reference conversations about crimes other than those which were authorized within the order. And Judge Hastings I think had read beyond that. When I asked him whether he had gotten to page 13, I then directed his attention back to page 13 to point that out to him.

Mr. **Gekas**. All right. Up to 170 then, the references to the individuals involved in this matter.

Mr. **Martinez**. All right. In the fourth progress report, which is Exhibit 170, pages 8 through 10, there is a long footnote, footnote No. 1, and in that footnote is a description of a conversation between Johnny Rivero and Kevin Gordon. It is Kevin Gordon and Johnny Rivero were on their way to meet a man name Sisemore in connection with getting on the waterfront.

And during the course of that meeting, there is a reference to Mayor Clark on page 9, Waxy Gordon tells Mr. Rivero that—to put this in its proper context, one of the things that we were investigating at that time also was police corruption. And as I stated, Gordon had suggested that perhaps he could facilitate that aspect of the off-loading of narcotics and the police protection for those off-loads.

In the context of that, Gordon stated to Rivero that he had Mayor Steve Clark in his pocket and could possibly approach him to help us in off-loading the dope. And I believe that that meant possibly approach him in connection with getting Clark to arrange for the protection for the off-loading of the dope.

There is another reference on page 10, the same footnote at the bottom. Waxy Gordon was telling Rivero that his buddy, Pete Ferguson, was the campaign manager for Steve Clark, and he goes on to state that his son, referring to Mr. Ferguson's son, was a dead head. However, he was able to get a job on the docks because Ferguson had to pay off somebody in order for his son to get a union card.

Mr. **Gekas**. All right.

Mr. **Martinez**. Now, after that, Congressman, there is—there are several references in the affidavit submitted—this is Exhibit No. 173—there are several references to Mayor Clark on pages 36, 62, and 63, and those references pretty much—the affidavit that was submitted to get the extension of the wire tap pretty much incorporated the prior interceptedconversations that I had included in the progress reports previously presented to Judge Hastings.

Mr. **Gekas**. All right. What was the next document presented to Judge Hastings which refers to Mayor Clark? We have noted one in 178, the first progress report after the extension?

I am leading only in conjunction with our plan here to skip over what is being stipulated.

Mr. **Martinez**. The first progress report in connection with the extended 30-day period, dated August 22, 1985, that is Exhibit No. 178.

There is a reference in there on page 8, footnote number one.

Mr. **Gekas**. Tell us what that is?

Mr. **Martinez**. OK. In here, what was happening during this stage of the investigation, Johnny Rivero had introduced Special Agent Dick Giannotti, working in an undercover capacity, as Gino, the consultant for the development group from Houston. And Gino and Johnny Rivero and Waxy Gordon were meeting at a place called the Top Draw Club, which I don't think is any longer in existence, but at that time was known to be an organized crime hangout.

During the course of that meeting, conversation took place in connection with Gino's desire to obtain some assurances prior to making the investment for the Photon project that the politicians would be taken care of. He wanted to get that assurance from Waxy, and there is a conversation that takes place that is pertinent to that investigation and that makes a reference to Steve Clark.

If you would like, I can read that for you.

Mr. **Gekas**. Yes.

Mr. **Martinez**. I am reading verbatim footnote No. 1. It will be the third sentence:

> During the meeting Gino asked Waxy, "If there is a problem with zoning in the area that we'd like, what do we do?"
>
> Waxy responded, "That's what I'm here for. If we run into a problem with zoning and what have you, I have to talk to certain individuals and what have you, and he gives me a figure or I quote him one on what's available, how long it will take to get a package together."
>
> Gino responded, "Do you mean money?"
>
> Waxy stated, "Yes. How will this be paid?"
>
> Gino responded, "Everything in cash."
>
> Waxy added, "No checks involved."
>
> Later on in the conversation, Gino told Waxy that he was interested in the Hialeah area. Waxy then stated, "Martinez (the Martinez referred to here is Raul Martinez, the Mayor of Hialeah) is a strong mayor."
>
> Gino responded, "What's he like?"
>
> Waxy responded, "Martinez is a close friend of Steve Clark."
>
> Gino asked, "Will he (Martinez) be a problem?"
>
> Waxy responded, "I don't believe so."
>
> Then Rivero stated, "That's two people you've got to take care of."
>
> To which Waxy stated, "No, there's only one guy you've got to take care of and he splits it up."
>
> Gino asked, "What do you think is his (Martinez's) range is?"
>
> And Waxy stated, "I can't say offhand. Martinez never prints a menu."
>
> And Gino added, "But just based on your experience."
>
> And then Waxy concludes by saying that it could go as high as 10 grand."

So that was a conversation very much pertinent to the Hialeah investigation, the Photon investigation.

Mr. **Gekas**. All right. Let's go to 179, the reference to Mayor Clark and the second progress report after the extension.

Mr. **Martinez**. All right, 179—178 I left in his chambers, by the way, and I picked up the following week on August 29th. August 29th is the second progress report during the extension period, and there are—the reference there starts on page 3, footnote No. 1.

Mr. **Gekas**. All right. Tell us generally what—how these people were mentioned, your own summary of how these people were mentioned in this particular exhibit.

Mr. **Martinez**. All right. Progress report—this second progress report, dated August 29th, was presented to me in—by me to Judge Hastings while he was in court. I gave it, I believe, to his clerk and the clerk handed it up to the court. The court indicated to me that he wanted to see me in chambers, and he went in his chambers the back way and I went through his secretary's office.

Mr. **Gekas**. We ask for a recess for a vote in the House.

The **Chairman**. We will grant a recess. Let me, before you run off, if there is just a moment. During the time you are gone let us meet with Mr. Baron and Mr. Anderson once again to explore the possibility of some of the examination going forward by your counsel when you are gone. I think we have still got a couple of weeks of this trial to go, and I can see that this is only one of the many interruptions we are having to deal with, but I think we should revisit that if we possibly could while you are voting, or as soon as you return.

Mr. **Gekas**. I would concur in that. Personally, I have reservations about that.

The **Chairman**. As soon as you return, we will visit on that.

We will stand in recess until the House managers return.

[Recess.]

The CHAIRMAN. The committee will reconvene.

Representative Gekas, if you would continue with your examination.

Mr. GEKAS. We were about to continue with the testimony having to do with Exhibit 179, one of the progress reports, and I will ask the witness to tell us the circumstances through which you led this progress report to the judge.

Mr. MARTINEZ. Congressman, this is the second progress report, dated August 29, 1985. I prepared this report. As I stated previously, I took this report personally to his honor, Judge Hastings. He at that time was in the courtroom. I gave the report to somebody in his courtroom, I think it was the clerk, who handed the report to the judge. And I believe that the judge stopped the proceedings at that time, indicated that he wanted to see me in chambers, and then proceeded to chambers, he through the back way and I through the main entrance through his secretary's office, into his chambers.

When I walked in there, his honor had begun to look at the report, and he made a reference to me. He stated, "Pretty heavy stuff." At that point in time I asked him what he was referring to. My question specifically, and I am refreshing my recollection by looking at the FBI 302 of my interview.

I asked his honor, "Do you mean Mayor Clark?" To which he responded, "Um-hum," and he didn't look up from what he was doing, he just made that reference.

Then he and I began to talk, and I told his honor that Mayor Clark was not the target of the investigation. I meant that to mean that he was not the focal point of the investigation. That he had been introduced through the confidential source, Johnny Rivero, by Waxy Gordon as somebody who will be contacted, to make contact into Hialeah Councilman Silvio Cardoso, who, according to Gordon, would have to be taken care of in order to obtain zoning and licensing changes.

Mr. GEKAS. What did the judge further say?

Mr. MARTINEZ. OK. I explained all that to Judge Hastings, and then his honor made a comment to the effect that he had heard that there were corrupt Hispanic or Spanish politicians in the area that were doing these types of things, referring to corrupt zoning practices.

At that time he made a comment as to what would be the proper way of referring to these people, Hispanic or Spanish, and I stated that it was proper to refer to them as Cuban; in fact, that is what we were dealing with, Cuban politicians. I am also of Cuban descent, and I think his honor was just trying to be courteous. Then we talked about that for a little bit, as to the proper way of referring to Cubans or Hispanics or Latins or what have you.

I then explained to his honor that—what we were doing, and I told Judge Hastings—and, by the way, just so that I can put this in proper context, if I may back-track a little bit. The reference in the report was a footnote number 1 on page 3 and it goes onto page 4, and that footnote explains a meeting that was had a place called the Miami Outboard Club between—among Johnny Rivero, Kevin Gordon, and eventually Mayor Clark.

They had met there pursuant to Mr. Rivero—Mr. Gordon's request to Rivero to meet there. When Mr. Clark came in, Mayor Clark came in, he said hello to certain other people and later on they began playing bumper pool, Kevin Gordon and Mayor Clark, and they were joined subsequently by Peter Ferguson, the mayor's then campaign manager, and Johnny Rivero, and then they played bumper pool

After the game of pool, and this is the reference in the report to Mayor Clark that Judge Hastings was, I believe, referring to. After the game of pool Rivero went to the restroom and he came back, and Gordon, Waxy Gordon leaned over to Mr. Rivero and said—quote, and this is reflected in footnote number 1—"Steve is going to take care of this Hialeah thing for us since that's where Gino wants to be."

Then, according to the report, it goes on to state that Clark said, "If you have any problems with that thing in Hialeah get in touch with me."

Waxy Gordon then asked Mayor Clark, "What's the name, that guy's name again?"

To which Mayor Clark responded, "Silvio Cardoso. If you have any problems with him get back in touch with me."

Mayor Clark then added that Cardoso was his contact in Hialeah.

Now that was the reference that Judge Hastings, I believe, was referring to in the progress report.

I then went on to explain to Judge Hastings, after our comment about Latins or Hispanics or what have you, of what the particular problem was. And I told Judge Hastings that the FBI and the U.S. Attorney's Office had engaged in what we call an overt investigation, a grand jury and interviews, that type of an investigation, to ascertain the corrupt problems, the problems with corruption in Hialeah, and that that investigation had been unsuccessful.

And I told Judge Hastings that what we had decided to do was to pull out of Hialeah, lay low, and to later on target the problem using the Photon project.

Then we went on and I told Judge Hastings what the Photon project was about. I gave a general description of it. It had all been previously contained in the reports. I also told Judge Hastings that Waxy appeared to be well connected and that he had claimed to have made illegal influence payments in the past and that he would do so in this case for Johnny Rivero and for Gino in connection with the Photon undercover operation.

I told Judge Hastings that Mayor Clark had walked into the picture when Waxy introduced him to Johnny Rivero, and I then further told Judge Hastings that that was the extent of it, and Judge Hastings made a comment to the effect that "Clark better be careful because he could get in trouble hanging around Waxy."

And that was the extent of my meeting at that time in connection with the second progress report.

Senator **Rudman**. Mr. Chairman, I have a question. This document that is being read from now, there was reference both to a document that is in evidence and a 302 that the witness is using for his own recollection. Is that 302 in evidence?

Mr. **Gekas**. No, it is not. What he is doing is using that to refresh his recollection in the stream of progress reports and referring specifically to an exhibit that is or will become a part of evidence, Exhibit 179, which was a progress report.

Senator **Rudman**. But the 302 that he is using to refresh his recollection is not in evidence now, nor does the House intend to have it introduced as evidence?

Mr. **Gekas**. We have no objection. We can offer that into evidence.

Senator **Rudman**. I am not telling you how to run your case, Counsel, I am just asking a question.

Mr. **Gekas**. No. No. No. I think for purposes of completeness we will offer it into evidence later. We will mark it as a different exhibit and enter it.

But, in the meantime, the information is being extracted from the progress reports as to the colloquy between the judge and U.S. Attorney.

All right, 180. Let's go to 180.

Mr. **Martinez**. One eighty is the third progress report and there are several references in there to Mayor Clark.

Mr. **Gekas**. All right. Go right to the references.

Mr. **Martinez**. Again, what I am doing—sometimes I will have to refer to this 302, and so that Senator Rudman knows what it is, this was the FBI interview of myself conducted by Agents Nottoli and Navas. And I had later on made some notes to try to remember what conversations I had with Judge Hastings in connection with this case. I used those notes and the rest of my recollection to put this interview together for the FBI. I then reviewed their interview of me, this report, and except for some minor changes, which I have made here in red, the report is an accurate recollection of my interview that I gave at that time, and certainly of my recollection of events that took place with Judge Hastings.

Senator **Rudman**. I just would ask, Mr. Chairman, as long as this is being used for really adducing very important evidence as to a conversation, I would like to ask at this time for my own comprehension how long after the interview with Judge Hastings that 302 was prepared?

Mr. **Gekas**. You may answer that.

Mr. **Martinez**. Yes. I made some notes of my recollections of conversations with Judge Hastings, I believe, in the middle of September after this problem came to mind, and I wrote those down. And I used those notes to then give this interview.

This interview was taken by the FBI on March 11, 1986.

Mr. **Gekas**. But, again, for the purpose——

Senator **Rudman**. Mr. Chairman, I am sorry, but, you know, this is a very serious charge and it is very important that we have this very accurately, and we have to evaluate the weight of the evidence. I think that I would get my question answered very easily if I can be told just two things: (a) what day and date was this witness in Judge Hastings' chambers conducting that conversation, and (b) what day and date was that 302 prepared?

Mr. **Gekas**. All right. What was the date of the Exhibit 179, the progress report to which you referred in these excerpts?

Mr. MARTINEZ. Yes. The date of Exhibit 179 was August 29, 1985, and the date of the interview as reflected on the report, it is reflected here that the interview was conducted on March 11, 1986. It was dictated on that date and apparently it was also—it was transcribed two days later, on March 13, 1986.

Senator Rudman, just so the record is complete, I have my notes here, that I believe have been copied and given to everybody, which I took in September of 1986—of 1985, that I used at that time to recall my conversations.

Senator RUDMAN. Thank you.

Mr. GEKAS. But the progress reports are——

Judge HASTINGS. Mr. Chairman? I don't mean to interrupt but we don't have those notes, and I would like to have them if we could. And I just heard a representation that suggests that we may have them.

Senator RUDMAN. Mr. Chairman, that is exactly my point here. It seems to me that if we are going to have examination here with notes—it is unusual, as the Chair knows, for witnesses to bring notes to the witness stand based on a lot of things without prior evaluation—and I know the hour is late and we are all tired, and this is a long process, but I think the defendant ought to have, or the respondent—excuse me, Judge Hastings—the respondent ought to have in front of him whatever the witness is testifying about so that he can follow it contemporaneously with the testimony for purposes of later cross-examination.

That is just basic elemental fairness, and I would hope that would be done.

Mr. GEKAS. We will do two things, Mr. Chairman. Number one, we will conduct the rest of the examination with reference only to those matters that will be part of the evidence—the exhibits and the progress reports and what those reflect. Secondly, before we produce—before we allude again to the 302, if we ever do again, we will have provided the respondent with copies of the notes and of the 302 itself.

The CHAIRMAN. We would direct that copies of the 302 and the notes be provided to Judge Hastings and his counsel as quickly as possible here.

Judge HASTINGS. We have the 302, Mr. Chairman.

The CHAIRMAN. Oh. You do have the 302 but not——

Judge HASTINGS. Yes, sir.

The CHAIRMAN [continuing]. Not the notes. Well, if the notes will be provided, I think that will be very helpful. And, if the witness intends to refer to the notes in any more of his testimony, I think we, perhaps, should interrupt the proceedings while a copy of those is given to counsel.

Mr. GEKAS. If he finds it necessary again to refer to his notes, we will ask for a 5-minute recess to reproduce the notes.

All right, one eighty—did we do 180 yet?

Mr. MARTINEZ. No, Mr. Congressman.

Mr. GEKAS. All right. Please go directly to the references contained in 180. First, give us the date of that one.

Mr. MARTINEZ. One eighty is the third progress report in the extension period.

Mr. **Gekas**. When you say the third progress report, we ought to make clear you mean the third progress report of the extension?

Mr. **Martinez**. That is correct, of the extension period.

Mr. **Gekas**. All right.

Mr. **Martinez**. And it is dated September 5, 1985. There are several references in this report to Mayor Clark, and those references deal with events that took place on August 29th, intercepted telephone conversations.

The first reference is found on paragraph 8. That involves a conversation between Kevin Gordon and Special Agent Giannotti, undercover agent Gino.

During the conversation Gordon tells Gino that he had made a connection with the Hialeah Zoning Commission through Mayor Clark, and that if they had any zoning problems they will be handled.

Waxy—Mr. Gordon—and Gino agreed to meet on Tuesday morning to look at properties.

The next reference is found on page 5. That is also dealing with the telephone conversation that took place on August 29th, and it is a conversation between Rivero and Waxy. During that conversation Waxy stated that he gave Gino the whole story about the mayor and Hialeah.

Waxy goes on to state that, "Maybe we can drive him through Hialeah," referring to Gino.

The third and final reference is found on page 7, and it deals with a reference to a conversation that took place on September 3rd. At that time—footnote No. 2. At that time the report reflects that at noontime on September 3rd Gino, Rivero and Gordon met, and Gordon then drove Gino and Rivero through Hialeah and indicated several properties suitable for the Photon amusement project.

Gordon further told Gino that Steve Clark's man in Hialeah was Silvio Cardoso, a councilman in Hialeah.

That is the last specific reference to Mayor Clark in this report. There are other references in this report to the Photon undercover operation. There are also references in this report to the police, the North Bay Village undercover investigation. There are also references to other investigations.

Mr. **Gekas**. You presented this personally to the judge?

Mr. **Martinez**. Yes, I did.

Mr. **Gekas**. What else did you tell him in conjunction with the progress of the progress reports and of the investigation?

Mr. **Martinez**. Again I am going to be referring to my 302.

At that time I went to visit Judge Hastings, and my appointment I believe was for 4:30, although I saw him at 3:00 o'clock. He was in court. He was in the process of conducting a *voir dire* examination.

The report was given to his clerk, eventually presented to his honor on the bench. He asked to see me. I went up to the bench to talk to him and he asked me if I had anything to tell him. At which time I told Judge Hastings that no, everything was contained within the report.

I further indicated that the wiretap was expiring in approximately 10 days and that it would not be extended, and he indicated to me, "Good luck."

Mr. **Gekas**. All right. What next happened?

That concludes the testimony from this witness as to these exhibits and the references thereto, so that we can go on to the next phase, and last, of his presentation.

Tell the chairman and the——

The **Chairman**. Could we have those notes to make copies at this time? That might facilitate any cross-examination that might come up. Unless the witness will need those to refer to me in answering this next set of questions.

Mr. **Martinez**. I will need the 302 to answer, perhaps, additional questions.

The **Chairman**. That is fine, you can keep the 302. But the notes that you——

Mr. **Martinez**. These particular notes that I have in front me, these deal only with the Clark references. They can—I don't think they have ever seen these.

The **Chairman**. But did you have notes that you took yourself?

Mr. **Martinez**. Yes. Yes, I did, Senator.

The **Chairman**. Are those available that we could copy them now to give to——

Mr. **Martinez**. I think that the House managers have a copy of them that I sent to them. If they don't, I have got my own original notes here.

The **Chairman**. If you could just give those to our clerk so we could make a copy at this time.

Mr. **Martinez**. These are cold notes. In many instances, they are nothing more than scribbles.

Mr. **Gekas**. Now we are up to September 5th and that progress report in which you indicated to the judge that this would probably be the last one and that you are going to phase out the investigation or the need for the wiretap; is that correct?

Mr. **Martinez**. I indicated to his honor that we would not be extending it.

Mr. **Gekas**. All right. What happened next, that you recall, in the sequence of events?

Mr. **Martinez**. September 5th was a Thursday of significance that happened during the course of these investigations, and the next matter came up on—at that point in time, the significance at that point in time to me was on Monday——

Mr. **Gekas**. Tell us what happened.

Mr. **Martinez**. That would be on September 9th. I was gathered at the FBI in connection with planning for the first dummy off load of cocaine in connection with the North Bay Village police investigation, and we were meeting with the FBI agents in order to plan the logistics. That meeting was scheduled to take place sometime around noon hour.

Mr. **Gekas**. What did you learn?

Mr. **Martinez**. During the course of that meeting I was told by Special Agent Geoff Santini, who was the case agent on the wiretap, that there was a problem with the wiretap. Something to the effect—the exact words I don't remember, but it was something to the effect that it appeared from the intercept that conversations that Judge Hastings had leaked the wiretap.

He told me that he was in the process of getting the tap. Agent Santini was with us at the Bureau, and he was informed of this conversation by an agent back at the plant, the Title III plant. And Santini indicated that he was in the process of getting a copy of the actual tape, or perhaps the original tape itself, so that he could bring it over to the Bureau to listen to it.

I immediately contacted the U.S. Attorney, Mr. Kellner, and advised him of the problem. And I made arrangements to go visit with Mr. Kellner at the U.S. Attorney's Office, and I did that.

Mr. GEKAS. What problems did you discuss with your superior?

Mr. MARTINEZ. Well, there were a host of problems at that point in time. I really didn't know exactly what was going on, obviously. I, personally, had—in connection with my role and these cases I had investigative and legal problems. The paramount investigative problem that we had was to—apart from ascertaining exactly what happened here was what to do about the North Bay Village case.

It was a Monday. We had planned to do the off-load, the dummy off-load on Thursday, and that involved a dangerous undercover operation. So our first problem, investigative problem, was to figure out whether or not we would go forward with that investigation.

There were other problems, I can assure you that. But that was the primary investigative problem.

Mr. GEKAS. How did you decide with your superior, with the U.S. Attorney, on how to handle the next approaches that had to be made to Judge Hastings?

Mr. MARTINEZ. Well, at some point in time, I am sure it was immediately, Mr. Kellner notified the Public Integrity Section here in the Department of Justice The U.S. Attorney's Offices throughout the country are not allowed to investigate or be involved with investigations involving sitting Federal judges, as a matter of policy. So Mr. Kellner, I believe, notified the head of the office of Public Integrity Section, and they were brought into Miami. I believe they responded the next day and they came down to Miami and we met with them.

We had a meeting with them and members of the FBI. We were trying to figure out exactly what was going on and how to handle all these different problems.

Mr. GEKAS. What decision was made as to what to submit to Judge Hastings thereafter?

Mr. MARTINEZ. The legal problem that I had was as follows: We had intercepted—after we listened to the conversation, we had intercepted a conversation that appeared to contain evidence of a criminal activity beyond the parameters of what we were authorized to listen to, and that is not uncommon. But when that happens what you have to do is immediately bring that to the attention of the judge who is supervising the wiretap.

In this particular case, it appeared that the source of the leak was Judge Hastings and that particular problem was being investigated. Obviously, I could not take that progress report with that intercepted communications to Judge Hastings because we were investigating that problem. So what it was eventually decided to do—but I did have to take it to some judge. What was eventually decided to do was that we would approach Chief Judge King and we would give Judge King a full and unredacted progress report containing all of the activities, and we would give Judge Hastings a complete progress report excluding those matters that dealt with the leak. And that is what we did.

Mr. **Gekas**. All right. Tell the chairman and the members of the committee the final decisions made as to the ILA or the Miami docks investigation with which we began your testimony and of the zoning situation in Hialeah.

Mr. **Martinez**. Both of those—in both of those cases a central figure in our investigations, and both of those were undercover investigations, a central figure in those investigations was Kevin "Waxy" Gordon, and, also to some extent now developing, Steve Clark. Because of the leak to Steve Clark, obviously the Hialeah case appeared to be compromised. And because of the leak to Clark and to Mr. Gordon and their role, particularly Mr. Gordon's role, in the Hialeah case, and because of Mayor Clark's connections through Peter Ferguson and other people with the waterfront, that investigation was terminated because it appeared to have been compromised, or potentially compromised.

Mr. **Gekas**. All right. Now, to end your testimony, just give the committee a final kind of description of the resources that you had to pull back at the time of the leak?

Mr. **Martinez**. Well, I am not sure exactly how to answer the question.

Mr. **Gekas**. Well, how did you close down the operations?

Mr. **Martinez**. The North Bay Village investigation, would you like me to talk about that also?

Mr. **Gekas**. No.

Mr. **Martinez**. Just the other ones?

Mr. **Gekas**. You testified that that was continuing.

Mr. **Martinez**. No. The North Bay Village investigation continued; that is correct. But the other investigations were terminated. A decision was made to terminate those investigations completely.

Mr. **Gekas**. All right.

Now we offer stipulations into evidence, 289 through 294, 301 through 304, 306, 308, 310, 318, 319, 321, 322, 328, and 334—which we will not read into the record. They will stand for themselves.

We do want to offer into evidence as soon as the copies come of the notes of this particular witness that accompanied the 302, and of the notes that he took prior to this segment of his testimony as to the contents of the exhibits to which he was going to testify.

With that, we offer the witness over to the respondent.

Senator **Bryan**. Mr. Chairman, could we get the numbers of the stipulations that are not going to be read into the record?

The **Chairman**. Yes. Could you go through that list of stipulations once more?

Mr. **Gekas**. I will. Two eighty-nine straight through 294. Got that? Three-oh-one through 304. Then singly, 306, 308, 310, 318, 319, 321, 322, 328, and 334.

Senator **Bryan**. Thank you, Mr. Chairman.

The **Chairman**. Is there objection to those stipulations being admitted into evidence at this time?

Judge **Hastings**. No, Mr. Chairman.

The **Chairman**. Those will be admitted.

[Stipulation Nos. 289, 290, 291, 292, 293, 294, 301, 302, 303, 304, 306, 308, 310, 318, 319, 321, 322, 328, and 334 were received in evidence.]

[The stipulations are as follows:

289. Local 1922, located in Miami, Florida, is chapter of the International Longshoremen's Association.

290. WAXY are the call letters of a radio station in Miami, Florida.

291. In 1986 Stephen Clark had been Mayor of Dade County, Florida for a total of 14 years, from 1970 to 1972, and from 1974 to 1986.

292. Peter Ferguson was Mayor Clark's campaign manager for a period of time which included all or part of 1984 and all or part of 1988.

293. Kevin "Waxy" Gordon was the zoning code enforcer for the city of Surfside, Florida, when the April, 1985, FBI investigation began and during early 1986. Gordon had previously held a position as a code enforcement officer for the city of Miami, Florida.

294. In 1986, Mayor Clark had known Kevin "Waxy" Gordon since the early 1960's.

301. 18 U.S.C. 2517(5) requires judicial approval of the investigation of criminal activity discovered as a result of the wiretap if that criminal activity was not included in the orginal application for the wiretap.

302. The U.S. Attorney's Office presented Judge Hastings with weekly progress reports, dated July 22 and 29, and August 5 and 12, 1985, describing the information obtained from the wiretap authorized on July 15, 1985 and information obtained from other investigative techniques.

303. Assistant U.S. Attorney Roberto Martinez presented Judge Hastings with the First Progress Report on July 22, 1985. On that date, Judge Hastings reviewed and signed the report and entered an order placing the First Progress Report under seal.

304. Assistant U.S. Attorney Martinez presented Judge Hastings with the Second Progress Report on July 29, 1985. On that date, Judge Hastings reviewed and signed the report and entered an order placing the Second Progress Report under seal.

306. Assistant U.S. Attorney Martinez presented Judge Hastings with the Third Progress Report on August 5, 1985. On that date, Judge Hastings reviewed and signed the report and entered an order placing the Third Progress Report under seal.

308. Assistant U.S. Attorney Jon A. May presented Judge Hastings with the Fourth Progress Report on August 12, 1985.

310. Judge Hastings signed and reviewed the Fourth Progress Report on August 13, 1985, and at that time entered an order placing the Fourth Progress Report under seal.

318. On August 21, 1985, Johnny Rivero introduced Kevin "Waxy" Gordon to "Gino", an undercover FBI Special Agent posing as a Houston-based entrepreneur who wanted to set up the amusement operation. Gino was being impersonated by FBI Special Agent Richard J. Giannotti.

319. On August 22, 1985, Assistant U.S. Attorney Roberto Martinez presented Judge Hastings with the First Progress Report after the extension of the wiretap.

321. On August 22, 1985, Judge Hastings signed the First Progress Report after the extension of the wiretap and at that time entered an order placing the First Progress Report under seal.

322. On August 29, 1985, Assistant U.S. Attorney Roberto Martinez presented Judge Hastings with the Second Progress Report after the extension of the wiretap.

328. On August 29, 1985, Judge Hastings signed the Second Progress Report after the extension of the wiretap and at that time entered an order placing the Second Progress Report under seal.

334. On September 5, 1985, Judge Hastings signed the Third Progress Report after the extension of the wiretap, and at that time entered an order placing the Third Progress Report under seal.]

The **Chairman**. As to the exhibits, I believe all of the exhibits up through—was it through 184 or to 184 were agreed to?

Judge **Hastings**. That is correct, Mr. Chairman.

The **Chairman**. Was it including 184?

Judge **Hastings**. Yes, including 184.

The **Chairman**. Including 184, those have all been admitted. The other two that you referred to, I guess we would like to withhold judgment until we get copies and give those to Judge Hastings and his counsel so that they can make——

Mr. **Gekas**. I will do that on redirect, Mr. Chairman.

The **Chairman**. That will be fine. I think they should have a chance to review those before we pass on whether or not to admit them.

Mr. **Gekas**. We will attach numbers to them and offer them through redirect, subject to objections by respondents.

The **Chairman**. I think that would be appropriate.

Is there cross-examination at this time?

Judge **Hastings**. Mr. Chairman, respectfully not because, I think, there is anything that we are going to find in the notes. But I have about 45 minutes of cross-examination, and I don't know whether the Chair would wish that we should begin at this time or not.

The **Chairman**. Judge, we have got conflicting information here. One set of information says there will be a vote at 5:15 and another set of information says there will be a vote at 5:30.

Judge **Hastings**. Yes, sir.

The **Chairman**. On the thought that there may be a vote at 5:30, that would give us 10 to 15 minutes that we could use.

Judge **Hastings**. I don't mind. I don't mind at all.

The **Chairman**. If you could go ahead and at least begin the cross-examination. It may be interrupted, but I think it is worth a try.

CROSS EXAMINATION

Judge **Hastings**. Mr. Martinez, where are you employed at the present time?

Mr. **Martinez**. I am currently of counsel with the law firm of Zuckerman, Spaeder, Taylor and Evans in Miami, Florida.

Judge **Hastings**. And it is coincidental, I am sure, that that is the firm that represents William Dredge and "Brother" Moscato, two persons whose names have come up repeatedly in this inquiry?

Mr. **Martinez**. I didn't even know that they were involved in this until after I accepted a preliminary.

Judge **Hastings**. That is what a coincidence is.

Mr. **Martinez**. That is right.

Judge **Hastings**. You continue to say that there was a reference to things said and done regarding the order, and you referenced your notes, and Senator Rudman has asked some questions with reference to it, which I appreciate.

You were not keeping a contemporaneous record of what was going on between your responsibilities and mine as the monitoring judge?

Mr. **Martinez**. I certainly wasn't.

Judge HASTINGS. So you diaried these matters after you learned the information regarding the allegation having to do with the disclosure?

Mr. MARTINEZ. That is correct. The diary—to call it that, would be dignify what they are. These are notes and scribbles.

Judge HASTINGS. All right. Did you note and scribble other times when you have litigated with me?

Mr. MARTINEZ. No, Your Honor.

Judge HASTINGS. Then it is fair to say that your focus came up because of this particular alleged disclosure?

Mr. MARTINEZ. After the problem arose is when I made references in a note pad to things that were occurring. And I tried at that point in time to recreate, to the best of my recollection, conversations that I had in your presence in connection with the wire tap.

Judge HASTINGS. Just to test your memory, do you remember other times that you litigated with me?

Mr. MARTINEZ. I remember two cases that I had with you that went to trial.

Judge HASTINGS. And one of those cases, if I am not mistaken, was a case that had involved a wiretap previous to the indictment?

Mr. MARTINEZ. That involved the case of Cheo Fernandez. That's correct.

Judge HASTINGS. That's correct.

A rather substantial case too, wasn't it?

Mr. MARTINEZ. It was a racketeering case involving a major marijuana smuggler.

Judge HASTINGS. A whole lot of sensitive information and a whole lot of names flying around that investigation, were there not?

Mr. MARTINEZ. There were a lot of names flying around the—it was an undercover operation—yes. I will answer that yes, but if I can explain. There were—I was involved not in the wire tap phase of it, as you know.

Judge HASTINGS. I understand that.

Mr. MARTINEZ. I was involved assisting Assisting U.S. Attorney Barbara Petris in the trial of that case. And during the course of that trial it became apparent to me, as I was learning the case, that there were confidential sources whose identity needed to be maintained confidential.

Judge HASTINGS. Yes. And I was aware of some of those persons, was I not?

Mr. MARTINEZ. I don't know during the course of the wiretap, because I didn't meet with you then.

Judge HASTINGS. I understand.

Mr. MARTINEZ. But I do know that during the course of the trial proceedings you were aware of who the informant was, I believe.

Judge HASTINGS. Right. Let's just talk about Cheo Fernandez's case just a little bit more.

Mr. MARTINEZ. All right.

Judge HASTINGS. There was a whole lot of money involved in that case too, wasn't there?

Mr. MARTINEZ. In terms of the attorney's fees or in terms of——

Judge **Hastings**. No, not the attorney's fees. There's never much money involved in those.

I am talking about the criminals.

Mr. **Martinez**. Cheo Fernandez was a major marijuana smuggler and he apparently had accumulated a lot of money.

Judge **Hastings**. Right. And that case went all the way through to its conclusion.

Mr. **Martinez**. Cheo Fernandez, I believe, pled guilty before Your Honor and before Judge Hoeveler on a tax matter, and then what went through to conclusion before Your Honor was the trial against Fanhoul and Fernando Fernandez. Those are the two people who were tried before you.

Judge **Hastings**. I see.

All right, then. I want to return, if we can, to the Waxy Gordon intercept, because that seems to be the initiation of this matter.

Waxy Gordon was intercepted and recorded. And precisely what is your recollection of what you were told that he said at that time, not what was on the tape, but what either Agent Santini or others told you that they had learned at that time?

Mr. **Martinez**. All right. All right.

We have gone over this at the Eleventh Circuit, at the House, and now here. The exact words, I do not know. Something to the affect, either of, quote, "Judge Hastings leaked the wiretap," or something to the affect of, we have intercepted a conversation in which it appears that Judge Hastings has leaked the wiretap, or something to the affect of, in a conversation with Kevin Gordon it appears that Judge Hastings leaked the wire tap to Mayor Clark.

Judge **Hastings**. Yes, sir.

Mr. **Martinez**. Something like that, Your Honor. The exact—I—the exact words I don't recall. At that point in time when this happened and I was advised of it, I can definitely tell you that I was shocked and depressed and highly upset and really not knowing what to do. I think to describe it as being extremely upset would be mild.

Judge **Hastings**. I understand you.

Now then, you testified at great length about how the leak affected this overall matter during the House inquiry. Am I correct?

Mr. **Martinez**. Yes. That's correct.

Judge **Hastings**. All right. Returning to the Gordon matter for just a moment, you did say in the House inquiry before the Subcommittee on Criminal Justice that you did not consider the fact that Gordon had said that Clark had said that I had said anything to be important, because at that time you considered if I was the source it didn't matter. Do you follow me? Let me see, can I run it past you? You look puzzled.

Mr. **Martinez**. Yes, please.

Judge **Hastings**. All right. What I am saying is in the House inquiry, is it not true that you testified that in regard to what Kevin Gordon had said, it would not matter because at that time you were operating on the belief that I was the source of Clark's information.

Mr. **Martinez**. No. I don't recall if I said that. The only thing I recall that had any way to do with doesn't matter, was in reference to a question by Congressman Bryant in which he was going over the points highlighted in the Public Integrity, or some report generated by the department in which one of the points that was referred to for the declination was that Kevin Gordon was dead.

Judge HASTINGS. That's right.

Mr. MARTINEZ. To which I told Congressman Bryant that that was not of significance, because whatever he said was already recorded, and that the person that we wanted to hear from, the key person here was Steve Clark.

Judge HASTINGS. All right.

Mr. MARTINEZ. I believe that's what you're getting at.

Judge HASTINGS. Is that your belief as you sit there today?

Mr. MARTINEZ. Yes.

Judge HASTINGS. Mr. Chairman.

The CHAIRMAN. That is the halfway bell on this vote that is taking place on the Senate Floor.

In light of that, we have no alternative but to recess.

We will begin again tomorrow morning at 9:00 a.m.

Judge HASTINGS. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

And we will reconvene at that time.

The committee stands in recess.

[Whereupon, at 5:25 p.m., the committee recessed to reconvene the following day, Friday, July 21, 1989, at 9:00 a.m.]

IMPEACHMENT OF JUDGE ALCEE L. HASTINGS

FRIDAY, JULY 21, 1989

U.S. SENATE,
IMPEACHMENT TRIAL COMMITTEE,
Washington, DC.

The committee met, pursuant to notice, at 10:19 a.m., in Room SH-216, Hart Senate Office Building, Hon. Jeff Bingaman, chairman of the committee, presiding.

Present: Senators Bingaman, Specter, Leahy, Durenberger, Pryor, Rudman, Bryan, Bond, Kerrey, Gorton, Lieberman, and Burns.

House Managers Present: Representatives Bryant, Synar, and Gekas.

Counsel Present: Terence J. Anderson, counsel for Judge Hastings; Robert S. Catz, counsel for Judge Hastings; Lewis Myers, Jr., counsel for Judge Hastings; Alan I. Baron, special counsel, House Impeachment Committee; Janice E. Cooper, Patricia Wynn, and Lori E. Fields, assistant special counsel, House Impeachment Committee; Michael Davidson, Senate Legal Counsel; Elaine Stone, counsel, Senate Impeachment Trial Committee; and Mark Klugheit, counsel, Senate Impeachment Trial Committee.

Staff Present: Anthony Harvey, administrator, Senate Impeachment Trial Committee; P. Casey McGannon, staff assistant, Senate Impeachment Trial Committee; and Isabel McVeigh, staff assistant, Senate Impeachment Trial Committee.

The CHAIRMAN. The committee will come to order.

Let me advise counsel for both sides and all others who are interested, of course, that the delay this morning was as a result of last night's late session. We are informed by the members of the committee that we will be able to retain a quorum for our committee up until 4:00 this afternoon. So we would expect to go from now until noon and then from 1:30 to 4:00 and then recess the committee.

DISPOSITION RE: TESTIMONY OF MONSIGNOR BRYAN WALSH AND MARGARET DABREAU OWENS

The CHAIRMAN. There are two items that I wanted to advise counsel on that have been brought to our attention and we have made a judgment on, the vice chairman and myself. One, the committee has been advised that Monsignor Bryan Walsh, who is listed as a House witness, is currently unavailable due to his hospitalization, and the committee will permit the House to introduce videotaped testimony of Monsignor Walsh which was taken before the hearing of the House subcommittee on Criminal Justice on the Articles of Impeachment against Judge Hastings. At that time, it is our understanding, the witness was examined by both House managers and counsel for respondent. If respondent wishes to call the Monsignor for another purpose or proffer a stipulation with regard to any other testimony, that will be considered at the time. But we would permit the introduction of that videotape.

This afternoon, in the event that there is time after the conclusion of the House managers' case, the committee will today hear the live testimony of Margaret Dabreau Owens, who is one of respondent's witnesses. In the event that there is not time for that testimony today, the parties will be permitted to make a videotape of her testimony after the committee recesses today, and that videotape would include both direct and cross-examination. Then if the committee has additional questions of the witness, we could determine to recall her at that time.

Mr. Bryant. Mr. Chairman, at this time, I speak on behalf of the House managers to strongly object to that procedure with regard to Margaret Dabreau. Margaret Dabreau is not an unavailable witness. She is available and she is as available as any of the witnesses called by the House. To follow this procedure with regard to her—which is, in effect, an invitation to discourage the members of the Senate to question her at the close of the direct and the cross, as every other witness has been questioned by members of the Senate at the close of the direct and cross—is in our opinion not to allow the House the same advantages that have been enjoyed by the respondent.

Now, if Mrs. Dabreau was sick, if she was infirm, it would be quite different. Monsignor Walsh is unavailable because he is in traction. Mrs. Dabreau is not unavailable. She is going to be in Jamaica, or wants to be in Jamaica, we understand it. It is no more difficult to fly here from Jamaica than it is to fly here from south Florida. Our witnesses have had to fly from south Florida, have had to interrupt their vacations. Mr. Miller had to come down here in spite of his family vacation in Cape Cod. She is in no different a position than our witnesses have been, and we do not understand why there would be a different standard applied to the respondent's witness than would be applied to our witnesses.

The Chairman. Representative Bryant, I think the committee has tried to accommodate the House in the presentation of its witnesses and tried to consider the convenience and inconvenience of witnesses in doing so. And we feel this is a fair way to try to be balanced in the handling of this.

Obviously, any committee member who is inclined can remain and participate and watch the questioning at 4:00 o'clock if that occurs at 4:00 o'clock and can ask questions at that time.

Mr. Bryant. Well, the House would inquire: Are there any volunteers from the panel who are going to remain after 4:00 o'clock and ask those questions?

The Chairman. I do not know at this time, but that option exists for committee members.

Senator Specter, did you——

Mr. Bryant. I would like to reaffirm. We strongly——

The Chairman. We understand your position, Representative Bryant. We understand your position. We have decided what we are doing in this matter, and we are advising counsel. We are not asking counsel for opinions on the subject.

Mr. **Bryant**. I am just offering my opinion as a member of the House of Representatives.

The **Chairman**. We understand that.

Senator Specter.

The Vice **Chairman**. Congressman Bryant, one option which we had considered was to permit the witness to be called out of turn, which candidly would be my preference, so that we would have an opportunity to see her. We understand the nature of the witness, and the chairman was being very candidly solicitous of the flow of your case so that you would not be interrupted.

Now, you are an experienced trial lawyer. There is a lot of discretion. Sometimes witnesses are permitted to be called out of turn. But we really want to accommodate everybody in a matter of any sort. This is a contested issue, and we understand that. People are concerned, and there are differences of view. But I would ask you to entertain that possibility.

Mr. **Bryant**. Well, Senator, first of all, we have had the direct flow of our presentation of our case interrupted a number of times for reasons not our own. Second, this witness is not unavailable. This witness wants to go on a vacation. That is all that is at stake.

We would like to complete our case. We are seven hours ahead of schedule. We are way ahead of our estimated time we were going to use. We would like to complete our case so that there is no interruption in the flow of testimony or the relationship of the one witness to the previous one or the next one. And the fact that they have a witness who wants to go on a vacation to Jamaica is, in our view, quite trivial relative to the importance of this case.

Now, if she were sick or in some way unavailable, it would be quite a different situation. But it is not.

The Vice-**Chairman**. Well, perhaps if we proceed immediately, we can conclude your case and hear the witness today. What is your estimate on that?

Mr. **Bryant**. Our estimate on time is the same as it has been from the beginning, and we have been consistently much quicker than our estimates. We are seven hours ahead of time.

The Vice **Chairman**. My question is: What is your estimate on concluding your case as to what time today?

Mr. **Bryant**. I think we can conclude it today, but I do not know that we can conclude it by 4:00 o'clock.

The Vice **Chairman**. Well, I offered that as an alternative, and in the absence of your acquiescence in that, I am inclined to—I have agreed with the chairman that if you would be willing to take her out of turn, then we would have a chance to question her. But if that is unsatisfactory to you—and I respect your judgment on that—we consider that the lesser imposition on the House status. So we have so ruled, as the chairman has announced.

Mr. **Bryant**. Our view of that is that that is a greater prejudice to the chronological presentation of our case than the other prejudice, which the chairman has ruled you are——

The Vice **Chairman**. Well, we respect your judgment on that. You are the manager, and you have that responsibility. We respect that.

The **Chairman**. I believe we are in the midst of cross-examination of Mr. Martinez at this point. Can he be re-called? And, Judge Hastings, can you continue with your cross-examination?

[Pause.]

The **Chairman**. You are still under oath, Mr. Martinez.

Judge **Hastings**. Good morning, Bob. How are you doing?

Mr. **Martinez**. Good morning, Your Honor.

Judge **Hastings**. Thank you, Mr. Chairman and Senators. Good morning.

When we stopped on yesterday, I was discussing with you the fact that Kevin Gordon is dead and that this is the gentleman that I believe gave the first phone call to another person that was intercepted. Who was that other person?

TESTIMONY OF ROBERTO MARTINEZ (continued)

CROSS EXAMINATION (CONTINUED)

Mr. **Martinez**. His name was Dick Bonehill.

Judge **Hastings**. And he is an attorney; am I correct?

Mr. **Martinez**. To the best of my knowledge, he is. Or he was back then.

Judge **Hastings**. All right. Now, what, as best you can recall, and just to refresh the Senators where we were yesterday, were you told what Mr. Gordon said to Attorney Bonehill?

Mr. **Martinez**. You're talking about initially?

Judge **Hastings**. Yes.

Mr. **Martinez**. The first time he came to my attention?

Judge **Hastings**. Yes.

Mr. **Martinez**. With all due respect to you and to members of the Senate, we have gone over this several times. The exact words I don't recall, Your Honor, but it was something summarizing, in fact, what had been intercepted, which was something to the effect that it appeared that Judge Hastings had leaked the wiretap to Mayor Clark and that that was obtained—that information was obtained from the interception of the phone call of Mr. Gordon.

Judge **Hastings**. Right. And you've described your reaction as being shocked, et cetera.

Mr. **Martinez**. Very upset.

Judge **Hastings**. And most understandably. My concern is, did anybody, you or anyone else, at that point seek out Kevin Gordon to determine whether or not he was telling the truth about what Mayor Clark had said to him?

Mr. **Martinez**. Well, I think an attempt was made, if not that afternoon, I believe the next day.

Judge **Hastings**. And what was the result of that attempt?

Mr. **Martinez**. Johnny Rivero I believe was instructed by——

Judge **Hastings**. And he, too, is dead?

Mr. **Martinez**. Yes. Unfortunately, he passed away. Johnny Rivero was instructed by Special Agent Santini to make contact with Mr. Gordon to try to ascertain more information.

Judge **Hastings**. All right.

Mr. **Martinez**. And I think he may have been instructed to do that later on that same afternoon. Definitely I think the next afternoon there was a meeting.

Judge HASTINGS. I see.

Mr. MARTINEZ. The progress reports, the fourth and fifth, reflect that.

Judge HASTINGS. What I'm getting at, I guess, is that Gordon got back to Clark after the FBI came to him, am I correct, or had an opportunity to, regardless?

Mr. MARTINEZ. Gordon got back to Clark?

Judge HASTINGS. Yes. From the time that Gordon was approached about what he is alleged to have said to Attorney Bonehill, he had an opportunity to meet and/or talk with Mayor Clark if he wanted to?

Mr. MARTINEZ. Your Honor, maybe you're getting a little bit confused. I know that Mr. Gordon was approached by Mr. Rivero.

Judge HASTINGS. OK.

Mr. MARTINEZ. Now, later on, after Mr. Gordon agreed to cooperate with the authorities, he was approached then by the FBI.

Judge HASTINGS. That is correct.

Mr. MARTINEZ. OK. And then after that, there was a contact between Mr. Gordon and Mayor Clark.

Judge HASTINGS. I will move away from that.

Mr. MARTINEZ. All right, sir.

Judge HASTINGS. Have you handled other authorization of wiretaps other than the one you handled with me?

Mr. MARTINEZ. Yes, Your Honor. Two other extensive wiretaps.

Judge HASTINGS. And with whom were they in the southern District of Florida?

Mr. MARTINEZ. Those were presented to Federal District Court Judge William Hoeveler.

Judge HASTINGS. All right. And in each instance, did you do pretty much the same thing, seek the initial authorization, obtain it, and then the appropriate progress reports that followed?

Mr. MARTINEZ. The only difference—yes. The only difference is that in the case of Judge Hoeveler, my conversations with him were longer.

Judge HASTINGS. That's what I was getting at. I really didn't spend a lot of time with you——

Mr. MARTINEZ. No, sir.

Judge HASTINGS [continuing]. In that particular situation, did I?

Mr. MARTINEZ. The only time that you did spend with me that was a considerable amount of time was the meeting that we had in connection with the second progress report of the extension period.

Judge HASTINGS. That is correct.

Mr. MARTINEZ. Prior to that, our meetings were very brief.

Judge HASTINGS. OK. The impression, though, may have been created yesterday—and I'm hopeful of being able to dispel it—that I did something unusual. For example, when you came to the courtroom and I was conducting *voir dire* and got off the bench and came into my chambers to talk to you, there was nothing necessarily unusually about that, was there?

Mr. MARTINEZ. No. As a matter of fact, I was delighted that—with all due respect to Your Honor, prior to that point in time you had not indicated much interest in learning about the details of the investigation. So when Your Honor asked to speak with me in chambers about the facts of the case and the investigation, after all the work that I had put in and the seriousness of the investigation, I was delighted that you were indicating an interest.

Judge HASTINGS. It would be easy to say, though, Bob, would it not, that when you brought the information based on your reputation as I perceived it in the previous work that we had done, that I trusted that your work was impeccable?

Mr. MARTINEZ. Well, I would hope that you would have done that.

Judge HASTINGS. OK. Giving rise to my not having to spend a lot of time with you because I have that kind of elemental trust, at least at that point in time?

Mr. MARTINEZ. I'm not competent to——

Judge HASTINGS. All right.

Mr. MARTINEZ [continuing]. Go into that. I don't know what—I know that you and I had a good working relationship, certainly, prior to that point in time.

Judge HASTINGS. All right. Now, then, as matters would have it, then, what I am getting at is I paid a priority consideration to you for something that's pretty important in terms of its being able to move. I'm conducting jury *voir dire*. That's not as important as an authorization of a progress report, is it now?

Mr. MARTINEZ. Well, *voir dire* selection is very important, Your Honor. All that's important. You took time out from what you were doing to talk to me about something.

Judge HASTINGS. And I had done that before, even unrelated to wiretap matters, with you and other attorneys from the United States Attorney's Office; isn't that correct?

Mr. MARTINEZ. I have never had another wiretap application that I had——

Judge HASTINGS. I'm not talking about wiretap. I'm talking about you come to the courtroom, you have an important matter, you sit in the courtroom. Have you not heard me say, "Bob, do you have a matter?" and interrupt what I'm doing?

Mr. MARTINEZ. I don't have a specific recollection, but I can tell you quite frankly that it would not have been unusual for you—you have always been very polite towards me. So if you saw me in court, you would probably have seen me there with business to attend to. You probably would have stopped the proceedings and ask to speak to me. That's right.

Judge HASTINGS. Thank you. That helps to dispel the notion.

Do you remember testifying before the House inquiry committee, Criminal Justice Subcommittee?

Mr. MARTINEZ. The subcommittee before Congressman Conyers?

Judge HASTINGS. Before Congressman Conyers.

Mr. MARTINEZ. Yes.

Judge HASTINGS. Yes, sir. Now, there was a rather dramatic thing that occurred there, and I note that Representative Gekas chooses—and I respect that—not to have asked you about it. But since it is a part of this record, I want to reiterate the following question that was put to you by then Representative Pat Swindall from Georgia. And I recognize that there was a lead-in to that and something following. I am coming from page 167.

Representative Swindall said, "Finally, in your opinion, is it dangerous to have Judge Hastings continuing to preside as a Federal judge, given the nature of the sensitive information that crosses his desk?" And your reaction, with a smile, was, "Thank you for putting me on the spot. You are asking me whether or not you should impeach Judge Hastings?" And Representative Swindall said, "No. I am asking you if, in your opinion, you think it is dangerous to have Judge Hastings sitting in the position where he will see sensitive information about ongoing undercover operations." And you said, "Yes, sir, I do."

Now, all of that is a part of the record, and doubtless was and is the same kind of response you would give today. But I want you to tell the Chair and the Senators is whether or not you know of or have any personal animus toward me or me toward you, Bob, unrelated to this particular situation, previous and afterward?

Mr. **Martinez**. No.

Judge **Hastings**. All right. And it's fair to say, then, that after the Clark thing, to the limited degree that we have had any contact, that we get along personally?

Mr. **Martinez**. Yes. Your Honor, that's a very complex question. I'll be fair to you, and I want to be fair to everybody here. You and I treat each other, in light of the circumstances, with a tremendous amount of politeness. It is very awkward for me to meet with you in light of what I know.

Judge **Hastings**. Sure.

Mr. **Martinez**. Okay. I believe that there was a certain amount of betrayal, so it is very difficult for me to talk to you believing that.

Judge **Hastings**. I understand that.

Mr. **Martinez**. And I am sure that you are probably a little awkward around me in light of the fact that I'm going to be called as a witness and give testimony that could be damaging to you. So it is awkward.

In light of all that, you and I maintain a veneer of civility because we have to get along in this world.

Judge **Hastings**. Absolutely. And previous to that, we didn't have a veneer. We were civil.

Mr. **Martinez**. We've always been civil. That's right.

Judge **Hastings**. And insofar as this same line of inquire, when did you leave the United States Attorney's Office?

Mr. **Martinez**. April 1987.

Judge **Hastings**. And was that after the alleged disclosure to Clark?

Mr. **Martinez**. The disclosure took place in 1985. It would have been two years afterwards.

Judge **Hastings**. Right. And how long had you been in the United States Attorney's Office when you left the office?

Mr. **Martinez**. Approximately five years. From September of 1982.

Judge **Hastings**. Two questions. When you left the United States Attorney's Office after the alleged disclosure to Mayor Clark, you did not exclude me in the normal courtesy visits that a United States Attorney makes to a judge's chambers to say, "I'm moving on about my business"? You included me, did you not?

Mr. **Martinez**. I included you. That's correct.

Judge HASTINGS. And we had a conversation and I wished you well?

Mr. MARTINEZ. That's right. You did.

Judge HASTINGS. And I don't think there was a lot of veneer in that room, do you?

Mr. MARTINEZ. There might have been, Your Honor. I felt very uncomfortable. I went around to all the judges, and I didn't want to single out anybody.

Judge HASTINGS. I see. Well, you've been in south Florida for five years in the United States Attorney's Office. Previous to that, had you practiced law?

Mr. MARTINEZ. Yes, for two years.

Judge HASTINGS. And in south Florida?

Mr. MARTINEZ. Yes.

Judge HASTINGS. So you've been around south Florida a long time, right?

Mr. MARTINEZ. We came there in 1960.

Judge HASTINGS. Now, as a south Florida attorney and when you were an assistant United States Attorney, you are, I believe, and were aware of false claims by attorneys and others that they could influence judges?

Mr. MARTINEZ. False claims by—only once.

Judge HASTINGS. In the Southern District of Florida?

Mr. MARTINEZ. Only once.

Judge HASTINGS. Is that the Judge Spellman one?

Mr. MARTINEZ. No.

Judge HASTINGS. You don't know about the Judge Spellman one?

Mr. MARTINEZ. No, I do not.

Judge HASTINGS. OK. You don't know that there was an indictment that issued about a person who falsely claimed that he could influence Judge Spellman and, rather ironically, after I was acquitted, that that indictment fell before me?

Mr. MARTINEZ. I wasn't aware of that. What year was that, Your Honor?

Judge HASTINGS. OK. We'll get to it.

Mr. MARTINEZ. All right.

Judge HASTINGS. And I can't testify. All right.

Do you know what efforts in this case, Attorney Martinez, were made to rule out other sources of this alleged disclosure?

Mr. MARTINEZ. Well, I know that in this case the tactic that was followed was to try to obtain a recording from Mr. Gordon.

Judge HASTINGS. All right.

Mr. MARTINEZ. I would like to explain to the Senate that the Public Integrity Section at that point in time was working with the U.S. Attorney's Office and the FBI. And as far as determining the source of the leak, it was primarily their call with all of our input, because it dealt with a sitting Federal judge. The task at hand was to take the best route that we had available, which was Mr. Gordon, and approach him directly.

Judge HASTINGS. Who made that decision?

Mr. MARTINEZ. Well, I'm sure——

Judge HASTINGS. That was the best path?

Mr. MARTINEZ. Well, I'm sure it was made as a joint effort: the FBI, the U.S. Attorney's Office, and Public Integrity. I agree with them, by the way. I could be mistaken, but I think that that was the best tactic to take. And the way that it was—what we had decided to do was approach Mr. Gordon directly. Before doing that, we needed to get him on tape, recorded, and we also needed to make sure that we had some sort of a—something to use to—some leverage.

Judge **HASTINGS**. Can you answer my question, Bob? My question to you was: Do you know what efforts were made to rule out other sources of alleged disclosure?

Mr. **MARTINEZ**. I was answering it, Your Honor. We were approaching it by trying to find out what Mr. Gordon had learned.

Judge **HASTINGS**. OK.

Mr. **MARTINEZ**. He was to us, at that point in time, the only one who had knowledge. So the best way to ascertain whether or not it could have come from somebody else besides yourself was to put him in a position to go to the source of his knowledge, which was Mayor Clark. And that was the step taken.

Judge **HASTINGS**. So then it was automatic; if Clark said it, it was true?

Mr. **MARTINEZ**. If Clark—no, Your Honor. No.

Judge **HASTINGS**. OK, then——

Mr. **MARTINEZ**. This was——

Judge **HASTINGS** [continuing]. Stop right there and tell me who in your office was interviewed.

Mr. **MARTINEZ**. Who in my office was interviewed?

Judge **HASTINGS**. Yes. Who in your office was interviewed regarding any potential disclosure of this wiretap? Other than you.

Mr. **MARTINEZ**. Your Honor, this was a very sensitive—if I may explain to the Senate——

Judge **HASTINGS**. Can you answer me?

Mr. **GEKAS**. Mr. Chairman——

Judge **HASTINGS**. Who in your office——

The **CHAIRMAN**. Judge, we will permit the witness to complete his answer.

Mr. **MARTINEZ**. Whom in the office was interviewed? That's not—Your Honor, with all due respect, that's not the way that we handled it, and I don't think that was the way to handle it. At that point in time, I was concerned, as were other people, that we get to the bottom of this and we do it in such a way that it didn't stigmatize you. So it was kept as confidential as possible. As far as interviewing anybody else in my office, it was kept secret. We did not want other assistants to know this information about you.

Judge **HASTINGS**. Mark Schnapp knew?

Mr. **MARTINEZ**. Well, Mark——

Judge **HASTINGS**. Jon May knew?

Mr. **MARTINEZ**. If I may, Mark Schnapp was the head of my section. He was the head of the Political Corruption Section. He was also the assistant who signed off on the first wiretap application. Jon May was specifically designed by Judge Marcus, then U.S. Attorney Stanley Marcus, to assist me. So he would know.

Judge **HASTINGS**. OK.

Mr. **MARTINEZ**. There were others in the executive department.

Judge **HASTINGS**. Well, let me see can I carry you down another path. I understand what you did. I believe the House managers do to a relative degree based on the direct information. I believe that the Senate knows in part what investigatory undertakings were had. What I'm interested in is what investigatory undertakings were not done, among them being how many people in your office were made familiar with the contents of an authorization request.

Mr. **Martinez**. This particular one?

Judge **Hastings**. Yes.

Mr. **Martinez**. It was kept to a minimum, Your Honor. This is a sensitive matter.

Judge **Hastings**. Minimum. Two? Three?

Mr. **Martinez**. OK. I will answer that question, and I don't appreciate the way you're asking it. There were several people involved: myself, Mr. Schnapp, Mr. Gregory, Mr. Scharff, the U.S. Attorney, and Mr. May, to my knowledge. Maybe also Mr. Malman, Miles Malman, who was also in my section and who was, I think, a couple months thereafter trying a case before you.

Judge **Hastings**. Nine-month-long money-laundering case with a lot of sensitive stuff in it, right?

Mr. **Martinez**. Which I was supposed to be trying it with him, but because of the problem that I had, apparently caused by you, I was removed from that matter because I did not want to appear before you.

Judge **Hastings**. Exactly. All right.

Mr. **Martinez**. I'm not sure what you're getting at.

Judge **Hastings**. Well, all I'm saying to you, Bob, is all those papers over there in front of the clerk that are stacked up right there that were introduced in evidence yesterday—and I don't remember the exhibits, up to and including 184, a stack of progress reports and everything, somebody typed it?

Mr. **Martinez**. Sure.

Judge **Hastings**. You type it?

Mr. **Martinez**. No, Your Honor.

Judge **Hastings**. Did any of the people that you talked about just then that had various intercession with this particular order type it?

Mr. **Martinez**. No, the attorneys do not——

Judge **Hastings**. Then a typist typed it?

Mr. **Martinez**. Sure. A typist or a word processor. That's correct.

Judge **Hastings**. And when they type, they type on word processing stuff that has microfiche and all those kinds of things?

Mr. **Martinez**. I do not—unfortunately, I don't know how to use a word processor, but I don't think it has a microfiche. I think it has a disk.

Judge **Hastings**. And there was a lot of typing, so it's conceivable that it was done over a period of different days?

Mr. **Martinez**. There was a lot of typing. There was a lot of—there were to the extent that can be undertaken, security precautions taken with regards to this wiretap. It was in the Public Corruption Section.

Judge **Hastings**. OK. Let's get out of your office and get into mine. What is your understanding of what happens to a wiretap order in terms of people who handle it after a judge signs it? Not just me, any authorization.

Mr. **Martinez**. Well, I've only had two—three experiences, two different judges, and the procedures were—I can tell you what I did in Judge Hoeveler's. I would take it to the court directly, hand them the original. He would sign it in my presence. Then I would take the original to either his secretary or to his clerk, give it to them, ask them to give me a certified copy, and apprise them that it was a matter that had to be kept under seal. And before Your Honor, I did the same thing. But instead of taking it either to your secretary or your clerk, I believe that I always took it to your clerk—which I think was Marilyn?

Judge **Hastings**. Marilyn.

Mr. **Martinez**. That's right. And I would tell her that I wanted a certified copy, and I would tell her that it dealt with a wiretap and it should be kept under seal.

Judge **Hastings**. OK. Now——

Mr. **Martinez**. And I think she had familiarity with it.

Judge **Hastings**. I really want to help the Senators understand.

Mr. **Martinez**. Sure.

Judge **Hastings**. You know, because when you say this sealing thing, it evokes in my mind something like Fort Knox, that room over there that's sealed and all that. Tell them what sealed is in reality.

Mr. **Martinez**. The clerk would be in a better position than I would to tell them, but it essentially entails taking the—whatever document needs to be placed under seal and, in fact, placed in an envelope—I believe it's orange.

Judge **Hastings**. That's right.

Mr. **Martinez**. And they seal it in different ways. Where it goes to in the clerk's office, I do not know. I understand there is a vault—it's been told to me.

Judge **Hastings**. OK.

Mr. **Martinez**. That is a vault that——

Judge **Hastings**. Well, maybe we can trail it because it's reasonable to expect that when it leaves my office it goes to somebody else's office.

Mr. **Martinez**. Well, I do not know. I'm not the one who—I think Marilyn would be in a better position definitely than I would to go into that.

Judge **Hastings**. Well, the point that I'm making, to your knowledge, the United States Attorney with the Public Integrity Section didn't even ask Marilyn anything about this order, did they?

Mr. **Martinez**. At what stage?

Judge **Hastings**. At any stage.

Mr. **Martinez**. Well, Your Honor, that's not the way to investigate this matter.

Judge **Hastings**. Well, that's your view.

Mr. **Martinez**. That is correct. That is my view.

Judge **Hastings**. And I accept and respect your view. But all I'm saying is there are other things to look at if you're trying to rule out the possibility of a disclosure. You disagreed with that. Now, if you can just answer my question——

Mr. **Martinez**. Yes, I do disagree with that, Your Honor.

Judge **Hastings**. All right. I have no problems with your disagreement. Were there media accounts of zoning violations in Hialeah in some way connected to the beginning of the investigation that led to the Title III request for authorization as it pertained to zoning violations in Hialeah?

Mr. MARTINEZ. I believe what you're getting at, there were some Herald articles in February 1985.

Judge HASTINGS. One of the few times they've done some investigative journalism.

Mr. MARTINEZ. That was a good piece. They'd done some other good ones.

Judge HASTINGS. And it led to an investigation in the Untied States Attorney's Office?

Mr. MARTINEZ. It gave us—certainly tickled our interest. That's correct.

Judge HASTINGS. All right. And much of what was reported in the Herald had to do with zoning violations in Hialeah, some of which was ultimately being discovered in the undercover operation.

Mr. MARTINEZ. Well, the undercover operation, unfortunately, never really took off the ground.

Judge HASTINGS. I understand that.

Mr. MARTINEZ. But the under——

Judge HASTINGS. I'm not quarreling with you.

Mr. MARTINEZ. I would like to explain, Your Honor.

The CHAIRMAN. Judge, please allow the witness to explain his——

Judge HASTINGS. Thank you, Mr. Chairman.

The CHAIRMAN [continuing]. Answer.

Mr. MARTINEZ. The undercover operation, Your Honor, was designed to investigate those types of corrupt practices that have been publicized in the Herald.

Judge HASTINGS. I understand. And it didn't come to fruition because you feel that I disclosed information to someone. All I'm asking you is: Was some of the information that was in the investigative journalistic offering of the Miami Herald, in advance of any request for authorization, a part of the undercover undertaking such that it was in the public realm?

Mr. MARTINEZ. No.

Judge HASTINGS. OK.

Mr. MARTINEZ. But the undercover operation was Photon. That was an undercover project that was designed to ferret out the corrupt politicians involved in these practices.

Judge HASTINGS. Zoning violations?

Mr. MARTINEZ. Corrupt zoning violations.

Judge HASTINGS. And that was what was in the Herald.

Mr. MARTINEZ. But you asked me, Your Honor—what you asked me was whether or not that investigation dealt with the specific matters raised in the articles, and it did not.

Judge HASTINGS. OK. Let's deal with other matters, then. At some point, a decision was made, with which you disagreed, not to prosecute me; am I correct?

Mr. MARTINEZ. I want to answer that question——

Judge HASTINGS. Can you answer me yes or no and then explain?

Mr. MARTINEZ. Your question is—presupposes that I took part in the decision.

Judge **Hastings**. Let me take out the presupposition. At some point, a decision was made not to prosecute me; am I correct?

Mr. **Martinez**. Evidently. That's correct.

Judge **Hastings**. All right. Do you know when that decision was made?

Mr. **Martinez**. I would assume that it was made prior to the referral of the complaint to the judiciary.

Judge **Hastings**. And what, if you have an understanding, was the basis of that decision?

Mr. **Martinez**. The basis of that decision, I believe, was contained in a memorandum that Congressman Bryant used to question me at the House of Representatives. Prior to Congressman Bryant advising me of all the different points for purposes of declination, I was not aware of all the different points. So, apparently, there are multiple bases to not prosecute you.

Judge **Hastings**. All right. Now, also a decision was made not to prosecute Mayor Clark, was it not?

Mr. **Martinez**. For what?

Judge **Hastings**. That's the point that I wish to make. There was nothing to prosecute him about; is that what you're saying?

Mr. **Martinez**. I'm not aware—I'm not aware if there is. I mean, back then in 1987, if that's when you're referring to—when I left the office or——

Judge **Hastings**. No, when the alleged disclosure was made and the investigation leading up to the complaint being filed with the judiciary that we are on Article XVI about. Was there a decision made not to prosecute Mayor Clark? Or if no decision was made not to prosecute him, was there anything to prosecute him about?

Mr. **Martinez**. I don't—Your Honor, if I can recall exactly, I don't believe a decision was ever made not to prosecute him because a decision was never called for.

Judge **Hastings**. All right. Because there was nothing to prosecute him about?

Mr. **Martinez**. There were—I don't know of any evidence that could be used to return an indictment against Mayor Clark back in 1985.

Judge **Hastings**. Big question, then. Why was he taken to a grand jury?

Mr. **Martinez**. I did not do that, Your Honor.

Judge **Hastings**. Who did?

Mr. **Martinez**. The Public Integrity Section.

Judge **Hastings**. He was taken to a grand jury?

Mr. **Martinez**. I have been told that.

Judge **Hastings**. Agent Mazzella testified before a grand jury as well?

Mr. **Martinez**. I understand that's the case. That's right.

Judge **Hastings**. Do you know whether that was in advance of the decision or after the decision not to prosecute me?

Mr. **Martinez**. To my knowledge—and now you want me to speculate—I believe——

Judge **Hastings**. Sir, if you don't know, please.

Mr. **Martinez**. It's speculation, Your Honor. I did not have—the Senate knows this. After Kevin Gordon signed his agreement, my role in this case substantially diminished, and the Public Integrity Section took over.

Judge HASTINGS. All right. Did you learn yourself or have you had it reported to you that when Mayor Clark was taken to the grand jury that, once again, the awesome investigatory powers of the Miami Herald allowed that they were aware that he went to a grand jury?

Mr. MARTINEZ. I read an article that appeared in the inside pages of the local section of the Miami Herald which made reference to apparently Mayor Clark appearing before a grand jury.

Judge HASTINGS. And that was before the matter was brought to my attention?

Mr. MARTINEZ. I don't know, Your Honor. I don't know. That would be speculation.

Judge HASTINGS. I want to turn to another area and be very brief so that——

Mr. MARTINEZ. That's fine.

Judge HASTINGS [continuing]. We can complete this.

What is a pen register, Bob?

Mr. MARTINEZ. Your Honor, a pen register is a device that registers the numbers that are called from a particular telephone facility—outgoing. Outgoing phone calls.

Judge HASTINGS. And they do not carry the same sensitivity, but judges have to sign off or authorize those, do they not?

Mr. MARTINEZ. It depends, Your Honor.

Judge HASTINGS. Well, tell me when you all get a pen register that is not authorized by a United States District Court judge or a United States magistrate.

Mr. MARTINEZ. I'm sorry, Your Honor. I did not hear that.

Judge HASTINGS. I'll repeat for you. Tell me a situation you know where you get a pen register on a person's telephone that is not authorized by either a United States District Court judge or a United States magistrate.

Mr. MARTINEZ. There may have been—you don't need—there's no statutory or constitutional requirement to get a court order.

Judge HASTINGS. So is it in the Southern District of Florida our custom and practice that we do it that way?

Mr. MARTINEZ. Yes, although I think I recall instances in which the phone company went up on a pen based upon our representation that we would go to a court the following day to get an order.

Judge HASTINGS. All right. But if a person knew about a pen register and he or she were conducting illegal business on the phone and knew that someone was interested in where their phone calls were being made insofar as the registering of the number itself is concerned, then revealing that information to the person could cause them to go outside and use other phones? That's all I'm getting at.

Mr. MARTINEZ. Candidly, you said so much that quickly I'm not sure I understand, Your Honor.

Judge HASTINGS. I'll try to break it down.

Mr. MARTINEZ. If you want to know whether or not a pen register device in my opinion is a confidential investigative tool, yes, it is.

Judge **Hastings**. All right. And you do know that even after the Clark thing that I continued to sign off on pen registers? Or do you?

Mr. **Martinez**. Not any that I submitted to Your Honor.

Judge **Hastings**. I understand.

Mr. **Martinez**. I do not know what the United States Attorney's Office policy was. I don't think that—I don't know if any from the Corruptions Unit were given to Your Honor. There may have been some from the Major Crimes Unit.

Judge **Hastings**. All right. Let me ask you, then, do you know after the Clark thing whether I handled my regular calendar of criminal and civil cases? After the Clark alleged disclosure.

Mr. **Martinez**. Yes, Your Honor.

Judge **Hastings**. All right. And——

Mr. **Martinez**. Whether you handled your regular calendar?

Judge **Hastings**. Yes. You know, like criminal cases——

Mr. **Martinez**. Yes. Sure.

Judge **Hastings**. Even the one Miles tried for nine months that you were supposed to try.

Mr. **Martinez**. That's right.

Judge **Hastings**. And you do not doubt, do you, that a lot of those matters carry with them sensitive information that of necessity I would have had to handle?

Mr. **Martinez**. Again, I would be speculating. I know for a fact that no political corruption matters were presented to Your Honor. No way. I believe that that decision was made after the problem that we had with you. Now——

Judge **Hastings**. But political corruption isn't the only kind of corruption in the world, is it?

The **Chairman**. Judge, let the witness complete his answer. I don't believe he completed his answer.

Judge **Hastings**. I apologize, Mr. Chairman.

Mr. **Martinez**. Your Honor is a sitting Federal court judge in a very busy district with a lot of criminal cases, and a lot of those cases do contain sensitive matters, Your Honor, and you did try them. I am not aware of any wiretaps that were presented to Your Honor after the Clark problem. I could be wrong, but I'm not aware of any. So I believe that Your Honor was not presented any sensitive information in an in camera setting.

Now, I may be wrong, but certainly not from the Corruptions Unit.

Judge **Hastings**. Plea bargains with witnesses, cooperating witnesses, all of those things, the protection of witnesses, all of those things were not presented to me in camera, you're saying?

Mr. **Martinez**. Your Honor, I'm not sure what was presented to you. I just know that you are a sitting Federal court judge, and out of necessity a prosecutor has to present to a sitting Federal judge confidential information as the case arises.

Judge **Hastings**. But I don't want to create the impression, or have you create the impression, please excuse me, that many sensitive matters after the Clark matter were not presented to me.

Mr. **Martinez**. I can only tell you my own personal experience.

Judge **Hastings**. OK. So you didn't talk about me much in the office, I gather?

Mr. **Martinez**. I went out of my way to protect Your Honor.

Judge **Hastings**. Thank you. Do you know of any instance before or after Clark, Bob—before or after Clark—where I abused, belittled, berated, held in contempt, or ridiculed any Assistant United States Attorney, FBI agent, or any of the personnel associated with them?

Mr. **Martinez**. From before the Clark matter?

Judge **Hastings**. Before the Clark matter.

Mr. **Martinez**. After the Clark matter, I had very little dealings with Your Honor. Before the Clark matter, I felt that I could appear in front of you and give you confidential information without any problems.

Judge **Hastings**. The question that I asked you was a little bit different.

Mr. **Martinez**. It's an extension of that. Otherwise, I wouldn't have done that. I do not remember you doing any of that kind of stuff prior to the Clark matter.

Judge **Hastings**. Do you know of any juror or litigant, civil or criminal, that reported that I was discourteous in any manner in any judicial undertaking or mistreated them in any way?

Mr. **Martinez**. Any juror?

Judge **Hastings**. Juror, litigant, or any person in a judicial capacity that alleged that I was discourteous or mistreated them in any way?

Mr. **Martinez**. I am not aware of any.

Judge **Hastings**. Do you know of any strained relationship between any of my colleagues and myself, my fellow members of the United States District Court of the Southern District of Florida? You wouldn't be privy to that?

Mr. **Martinez**. I'm not quite sure what you all do when you get together and what you think about each other. So I would have no idea, and I wouldn't want to touch that question.

Judge **Hastings**. OK. I appreciate that, Bob.

Do you know by reputation or have you met, either in an investigatory capacity or otherwise, the following people I am about to name: Federal Agent Anthony Amoroso?

Mr. **Martinez**. Do I know him?

Judge **Hastings**. Special agent, yes.

Mr. **Martinez**. No, I personally don't. I've heard the name.

Judge **Hastings**. You know that he is——

Mr. **Martinez**. Something to do with your trial.

Judge **Hastings**. But you also know that he is a Special Agent with the FBI.

Mr. **Martinez**. I've heard that. That's correct.

Judge **Hastings**. All right. And former FBI agent, now general manager of World Jai Alai, H. Paul Rico?

Mr. **Martinez**. I've met him.

Judge **Hastings**. And you know that he was formerly a special agent with the FBI, and he, too, had something to do with my original case?

Mr. **Martinez**. That's right.

Judge **Hastings**. Are you aware of the fact that he is represented by William Cagney, who also represents Mayor Clark?

Mr. Martinez. Well, I know Bill represents Mayor Clark, and I know that he has done some work for the Jai Alai. As to whether or not he represents Mr. Rico individually, I'm not aware of that.

Judge Hastings. Were you in the office at the time that the World Jai Alai was under investigation by the United States Attorney's Office for the Southern District of Florida?

Mr. Martinez. No, I didn't know they were. Was it the Strike Force or the United States Attorney's Office?

Judge Hastings. Do you know the name Silvio Cardoso?

Mr. Martinez. Sure do.

Judge Hastings. Will you tell the Senators how you come to know Silvio Cardoso?

Mr. Martinez. I don't know him personally.

Judge Hastings. I understand. I said investigatory.

Mr. Martinez. Sure. Mr. Cardoso was then a councilman for the city of Hialeah. He was definitely one of the people that we suspected to be involved in corrupt activities based upon intelligence and evidence. His name was the name given by Mayor Clark to Mr. Gordon as being his contact in Hialeah. That's why that was of such interest to us, because it was a name that had some significance to us. He, I think, was indicted some time in 1986 or 1987, I'm not sure what, in connection with a crime to obtain FBI reports, phony FBI reports. He was trying to bribe a person who he thought was a corrupt police officer who had access to a corrupt FBI agent. He, I think, was—he was indicted, and I understand the case may have been disposed of.

Judge Hastings. There was a Clark-Cardoso connection in the undercover operation, or at least words were said that "Silvio is my man," whether that's true or not or what it meant or not.

Mr. Martinez. Certainly were there.

Judge Hastings. All right. Do you know the name Alberto San Pedro?

Mr. Martinez. Yes.

Judge Hastings. The celebrated person. Where is he from?

Mr. Martinez. Well, Mr. San Pedro is also a fellow from the Hialeah area, and he, along with Mr. Cardoso, in late 1985 or early 1986 worked together to try to obtain the FBI reports through that phony corrupt FBI agent.

Judge Hastings. And let's say for all intents and purposes that even by news accounts you know that there are allegations. I'm not saying that these things are true, but are you aware of allegations—and please don't say what the allegations were—about a connection between Alberto San Pedro and Mayor Clark?

Mr. Martinez. Well——

Judge Hastings. I'm not asking you to say it because I'm not trying to pollute anything. I just simply want to know, do you know that there was such an allegation?

Mr. Martinez. Yes, and I'll answer with an explanation.

Judge Hastings. Yes, sir.

Mr. Martinez. Yes, there was an allegation. Mr. San Pedro is a person of extreme suspect credibility, and I don't believe anybody believed what he was saying with regards to Mayor Clark.

Judge Hastings. Do you know, then, Bob, about a man named Henry Kobetisch, K-o-b-e-t-i-s-c-h?

Mr. Martinez. No.

Judge Hastings. And you're shaking your head and you say you don't know the name.

Mr. Martinez. Perhaps Your Honor——

Judge Hastings. Please listen to the circumstances and see if it jogs your memory——

Mr. Martinez. All-righty.

Judge Hastings [continuing]. With reference to things that you may come to have known in and/or around July 1985, a person, Henry Kobetisch, who worked for Southern Bell in the Southern District of Florida, installing wiretaps in 1985, who was indicted for accepting bribes from Alberto San Pedro to reveal information regarding wiretaps and who ultimately pled guilty to that indictment? Do you know anything about that at all?

Mr. Martinez. OK. The name is still not familiar. I remember there was some sort of incident involving somebody in the phone company. That's right.

Judge Hastings. And this man was a man that installed the wiretaps?

Mr. Martinez. I don't know who he was.

Judge Hastings. Did anybody from the FBI ever go to him or any other person who installed wiretaps?

Mr. Bryant. Your Honor, the House would raise an objection of the continuing testimony on the part of the judge. His first answer about this particular individual was he didn't know who he was. Then we heard direct testimony from Judge Hastings about who he was and all the circumstances about him.

Judge Hastings. May I respond, Mr. Chairman?

The Chairman. You may.

Judge Hastings. Only that the witness, once I did put the circumstances, indicated that he did have at least some awareness of the circumstances.

The Chairman. The objection will be overruled, and the questioning can continue.

Judge Hastings. All right. I'll move away from that, but my point that I was trying to raise is that there are people who work installing these wiretaps. You don't install them. The judge who authorizes the wiretap doesn't install them. The FBI agent does not install them. So someone from the phone company handles this last desensitized request that goes to them where I have authorized, or the judge has authorized the wiretap, and then an individual goes out and performs the mechanical work. Now, that seems logical. I don't know.

Mr. Martinez. Well, let me answer your statement.

What I do with the order is I give it to the case agent, and the case agent, I believe, gives the order, the redacted order, to an agent who is involved in technical activities. I've forgotten his name. He's always around the Bureau, and he's a very nice fellow with a tremendous amount of technical knowledge. As far as I knew, he was the one who, obtaining the assistance of the phone company, actually did the installation. But I could be mistaken. I'm not a tech person, Your Honor.

Judge Hastings. Well, I represent on a good faith basis that there is such an individual represented by an attorney named Sam

Rayburn, and I proffer to the Senators the man's name, Henry Kobetisch, who in 1985 installed wiretaps for Southern Bell and pled guilty to accepting bribes from Alberto San Pedro for revealing information concerning wiretaps in and around this same period. And what you're telling me and the Senators is that no one of your knowledge from the FBI ever sought out that information.

Mr. MARTINEZ. Let me ask you a question, Your Honor.

Judge HASTINGS. Sure.

Mr. MARTINEZ. When was he arrested?

Judge HASTINGS. I think I would—I'm going to testify about this matter, Bob, and I appreciate you but I think it would be——

Mr. MARTINEZ. Well, let me suggest——

The CHAIRMAN. I think probably to keep this orderly, Judge, if you could keep your cross-exam in the range of questions, and the witness could then respond to those. That would be better.

Mr. MARTINEZ. If I may clarify——

Judge HASTINGS. I didn't answer, Mr. Chairman.

Mr. MARTINEZ. Mr. Senator, if I may clarify a matter?

The CHAIRMAN. Certainly.

Mr. MARTINEZ. I'm dealing here in the realm of speculation. But I think that this matter may have been—this man may have been arrested in 1986, which was several months after our problem. I think it was in the spring or summer, but I'm speculating.

Judge HASTINGS. Well, assume he was arrested in 1986. If the circumstances were in 1985 in and/or around the same period of time that he installed wiretaps, and that's the information that he was revealing, wouldn't that be significant?

Mr. MARTINEZ. It seems to be, Your Honor. I don't know if this man was——

Judge HASTINGS. Perhaps we'll be able to develop it.

Mr. MARTINEZ. I don't know if this man was involved in our wiretap.

Judge HASTINGS. Yes.

Mr. MARTINEZ. I don't know what this man did. I remember now that there was a matter involving the phone company. I don't know when he was arrested. It could have been in the summer of 1986. It could have been in the spring of 1986. I don't know what sort of an improper activity he was doing.

Judge HASTINGS. But you do know that the FBI never sought out information regarding this particular matter?

Mr. MARTINEZ. No, I do not, because like I told you, I was not involved at that stage of the investigation.

Judge HASTINGS. All right. Let me see if we can finish up.

The opinion that you expressed to former Representative Pat Swindall from Georgia is based in part, I believe—that is, as to me——

Mr. MARTINEZ. Yes, Your Honor.

Judge HASTINGS [continuing]. On the fact that the wiretap in question intercepted a call where Kevin Gordon said that Steve Clark told him that I had said that there was a Federal investigation into zoning corruption in Hialeah and to stay away from somebody; is that correct?

Mr. MARTINEZ. You want to know whether——

Judge HASTINGS. Just a synopsis.

Mr. MARTINEZ. Whether my opinion that I gave to——

Judge HASTINGS. In part was based on that.

Mr. MARTINEZ. In part was based upon the intercepted conversation.

Judge HASTINGS. And that opinion is also based on the fact that Kevin Gordon ultimately was wired, and Steve Clark repeated that allegation on tape; is that correct?

Mr. MARTINEZ. To Kevin Gordon.

Judge HASTINGS. That's correct.

Mr. MARTINEZ. I find that to be very important. Yes, sir.

Judge HASTINGS. All right. And when you formed the opinion and said what you did to Representative Swindall, or when Representative Swindall said to you what you agreed with, did you know that months before the wiretap originated that Glenn Whittle, a man named Glenn Whittle, called Special Agent Tom Dowd of the FBI and inquired as to whether the FBI was investigating Steve Clark and Pete Ferguson in connection with corruption in Hialeah? Did you know that?

Mr. MARTINEZ. No, I did not know that.

Judge HASTINGS. And when you formed your opinion, did you know that Steve Clark said that I relayed this information——

Mr. MARTINEZ. Let me, if I might, because you're going very quickly, Your Honor. What was the question that you asked me that I said——

Judge HASTINGS. When you formed your opinion that you related to or agreed with Representative Swindall about, did you know that months before the wiretap originated that Glenn Whittle called Special Agent Tom Dowd of the FBI and inquired as to whether the FBI was investigating Steve Clark and Pete Ferguson in connection with corruption in Hialeah?

Mr. MARTINEZ. No, I wasn't aware of anything like that.

Judge HASTINGS. When you formed your opinion, did you know that Steve Clark said that I relayed this information to him after my speech, and that a woman named Joy Royals Vickers has testified that it could not have happened that way, after my speech? Did you know that when you formed your opinion?

Mr. MARTINEZ. I——

Judge HASTINGS. Yes or no.

Mr. MARTINEZ. Well, your questions are very disingenuous, Your Honor, because I have since learned from looking at the report of Mr. Whittle's phone call that that's not what is reflected on the report. So not only did I not know that then, I still don't know it because I don't think that's what Mr. Whittle said.

As to what it is that this lady testified to at the House concerning your appearance at the MMAP meeting, I wasn't there. But you're asking me to——

Judge HASTINGS. What I'm asking you is just when you formed your opinion whether certain facts were predicated——

Mr. MARTINEZ. When I formed——

Judge HASTINGS. Just can you answer my question?

Mr. MARTINEZ. OK. When I formed my opinion, I did not know then, and I still don't have a complete understanding because I haven't reviewed the testimony in detail as to what the witnesses that you called before the House testified to.

Judge **Hastings**. All right. When you formed your opinion, did you know that Steve Clark and I do not have, never had a personal relationship, business relationship, or any relationship at all? Did you know that at that time?

Mr. **Martinez**. I find that to be irrelevant, Your Honor.

Judge **Hastings**. OK. When you formed your opinion, did you know that Anthony Amoroso and Steve Clark and Paul Rico are golfing buddies? Irrelevant?

Mr. **Martinez**. I did not know that.

Judge **Hastings**. That's irrelevant to you?

Mr. **Martinez**. What—I'm not——

Judge **Hastings**. When you formed——

The **Chairman**. The witness will be allowed to answer that before we go to the next question.

Judge **Hastings**. Pardon me, Mr. Chairman.

The **Chairman**. Did you still have a response?

Mr. **Martinez**. Your Honor, I did not know that, and I'm not sure how much weight I would put to that one way or the other.

Judge **Hastings**. I'm glad you don't have to put any. But when you formed your opinion, did you know that the FBI made a decision to indict Steve Clark but never did? And we've gone over that, I gather, that you didn't know that that decision had been made at some point.

Mr. **Martinez**. Who would——

Judge **Hastings**. The FBI.

Mr. **Martinez**. I'm sorry. I'm not—I know I'm not supposed to be asking questions, but who at the FBI made that decision? I was not aware of any such decision, Your Honor. And I——

Judge **Hastings**. OK. When you formed your opinion, you were——

The **Chairman**. Did you wish to——

Judge **Hastings**. I thought he was finished.

Mr. **Martinez**. Your Honors, I apologize for the fact that I'm asking questions. I know that I'm not supposed to be doing that.

The **Chairman**. Yes. You should not be asking questions. If you want to explain your answer, you can do that.

Mr. **Martinez**. Thank you.

Judge **Hastings**. I'll try to finish with one more along those lines, and very briefly, Mr. Chairman.

When you formed your opinion, did you know that Waxy Gordon had said that he gave Steve Clark $30,000 in a paper bag?

Mr. **Martinez**. Yes, that was, I think, included in one of the progress reports, but it wasn't $30,000. It was a different amount, I believe.

Judge **Hastings**. What was the amount?

Mr. **Martinez**. I don't recall. It would be in the progress report. But that was Waxy Clark talking.

Judge **Hastings**. All right. You testified—and this is my final line of inquiry, Bob. You testified at great length how this alleged leak affected the three ongoing investigations you were involved in, didn't you?

Mr. **Martinez**. Yes, I did, Your Honor.

Judge **Hastings**. And one of the seven reasons listed by the Department of Justice for not prosecuting this case against me was that they could not prove that I knew I would compromise the investigation, wasn't it?

Mr. MARTINEZ. I learned that through Congressman Bryant's questioning of me.

Judge HASTINGS. Then let's go to what Congressman Bryant said to you so that nothing I say will be taken out of context. At page 155 of the House transcript in that inquiry, Congressman Bryant said, the seventh was, "The Department of Justice was not confident that they could prove Judge Hastings knew he would compromise the investigation." And your answer was, "Assuming Judge Hastings is the source of that leak, I disagree completely with that statement. It doesn't matter. It was the source of the leak. I am not saying Judge Hastings is the source of the thing, but I have been told Mayor Clark did say that. If I had been the source"—meaning you—"of that leak and I did it, I don't believe that I could say in my own defense that I didn't know the extent of the damage. I think if that is what they are getting at there, I don't think that would be relevant either."

Was that your testimony before the House?

Mr. MARTINEZ. I think that pretty much accurately reflects what I said, yes.

Judge HASTINGS. And in your testimony before the House Subcommittee on Criminal Justice, it is true, as I just read, that you completely disagreed with the statement as put by Representative Bryant as put by the Department of Justice; am I correct?

Mr. MARTINEZ. I found that conclusion by the Department to be completely wrong.

Judge HASTINGS. And then you went on to say that the extent of the damage caused by the leak was irrelevant, irrelevant to the proceedings as to the source of the leak?

Mr. MARTINEZ. I don't know—no, I don't believe I said that. Your Honor, I don't know if you're looking at the actual written transcript, which I know it contains certain errors.

Judge HASTINGS. May I please approach the witness?

The CHAIRMAN. Yes, you may.

Mr. MARTINEZ. Thank you, Your Honor.

Judge HASTINGS. I will supply the Senate. I didn't expect to have to, but we'll make copies and supply the witness with page 157.

Mr. MARTINEZ. I don't need to look at it. What I was going to say is that I've read the transcript, portions of my testimony, Judge, and it contains errors, transcription errors. I've reviewed the videotape of my testimony, and I think that's a better record.

I'm not sure what your question was, Your Honor, but I think what I meant to get at in answering Congressman Bryant was that you and I and Agent Santini were probably the three individuals who knew most about this investigation, I believe, the full scope of that. So an off-handed comment by you—for the Department to come to the conclusion that you would not know the extent of the compromise by making that statement, I think that's what Congressman Bryant was getting at, I found that to be a very wrong conclusion for the Department to make.

Judge HASTINGS. Yes, well, the term that you used was irrelevant, and perhaps I did something that I believe a lot of people do, and that's hang on the wrong word. And in that light, Bob, I thank you for your testimony.

Mr. Chairman, that concludes my cross-examination.

The **CHAIRMAN**. Is there redirect, Representative Gekas?

REDIRECT EXAMINATION

Mr. **GEKAS**. There is, Mr. Chairman.

Mr. Martinez, the judge in his cross-examination engaged you in a discourse on the lack of extent of time, or extent of time which he put on reviewing the progress reports contrasted to, as he put it, the time that was spent by other judges and to which you testified. Your testimony, as we elicited it from you, bore on his commentary on Mayor Clark on the footnotes and so forth. Were there any other parts of the investigation on the progress reports on which he made reference other than those that included those political figures?

Mr. **MARTINEZ**. No. Not up to that point in time. Later on, he made a reference to—I think in the fourth progress report, "I see where you're going in connection with the 'ludes," referring to quaaludes. But, no, prior to that, all the conversations that were had, only that one dealt with Mayor Clark.

Mr. **GEKAS**. All right——

Mr. **MARTINEZ**. There was a conversation about the minimization, Congressman, but that was back in the beginning.

Mr. **GEKAS**. Was that before or after the leak, the one on the 'ludes?

Mr. **MARTINEZ**. That was after the leak.

Mr. **GEKAS**. So the point of my question was, what did he discuss with you before——

Mr. **MARTINEZ**. The only conversations that I had with Judge Hastings, substantive conversations dealt—prior to the leak, dealt with the scope and extent of minimization at the Surfside City Hall phones way back when I made the application on July 15th. Apart from that, we didn't have any substantive conversations until I presented the second progress report in the extension period that had the references to Mayor Clark.

Mr. **GEKAS**. On another matter, the judge elicited from you answers to questions about the operator or the employee of the telephone company that was subsequently indicted, et cetera. You testified originally, did you not, that the order that you take to the telephone company is already redacted. Well, how bare is that report? That has to come more explicitly from you to explain what information any telephone operator would have had.

Mr. **MARTINEZ**. It's part of the record. I would like to look at it. I know that the redacted order only had something to the effect of: A Federal judge has authorized us to intercept calls over certain telephone facilities. It didn't list the names of the individuals, and I don't believe it also listed the nature of the criminal activities that were under investigation.

Mr. **GEKAS**. And you disagreed in your response with his suggestions or intimations that an investigation should have included members of his staff in chambers?

Mr. **Martinez**. Back at that period of time, when we were trying to figure out what was going on, we were trying to—yes, I disagreed with that. We were trying to minimize the—we were trying to do this, I think, in a very surgical manner, to avoid improper stigma to His Honor, and we were also trying to get at the root of the problem. And I think it was approached properly.

Mr. **Gekas**. Were there any indications before, during or since that anybody in the United States Attorney's Office, typists, other attorneys, other agents, were suspect in this investigation?

Mr. **Martinez**. Not to my knowledge.

Mr. **Gekas**. All right. I just want to clear up a couple of things that were brought up during the course of the discussion, especially Senator Rudman's concern about your notes and so forth. I want to make sure that that's understood.

Do you or do you not have independent recollection of the things that went on between you and Judge Hastings as was reflected in the progress reports on those conversations about political figures?

Mr. **Martinez**. The conversation of September 15th, apart from my notes, I recalled that conversation, Senator, because it was the first time that His Honor had indicated an interest that was expressed in a verbal fashion to me insofar as actually wanting to sit down with me and talk about the facts of the investigation. And my concern at that time was one of extreme delight. I had spent a tremendous amount of time. This was a very significant investigation. Obviously, it was getting very hot. And he sat down and he talked to me, and that fact made an impression upon me.

Mr. **Gekas**. You said September 15th. September 15th is what you said was, just now, the time that you spoke with Judge Hastings. You meant September 15th of the date of your personal notes?

Mr. **Martinez**. September 15th is the date that my notes were made recollecting that. The conversation took place when I presented the second progress report on August 29th.

Mr. **Gekas**. All right. At this time, I think there's some unfinished business that I wanted to use the time on redirect to accomplish, and that is to offer into evidence and mark as exhibits the notes of September 15th, the notes that the witness undertook to take before his appearance here, immediately before, and the 302, which the respondents had copies of but were not part of the record.

The **Chairman**. Do you have those exhibits marked, ready to introduce?

Mr. **Gekas**. They're all there. Are they marked?

Mr. **McGannon**. Yes.

The **Chairman**. What are the numbers of those exhibits?

Mr. **Gekas**. I wanted to know the numbers.

Mr. **McGannon**. They are 224, 225, and 226.

Mr. **Gekas**. We offer those exhibits into evidence.

The **Chairman**. Is there objection?

Judge **Hastings**. There is no objection, Mr. Chairman.

Mr. Chairman, page 157, the witness said he didn't need it. Do you think it should be in the record? If so, we will make——

The **Chairman**. I don't believe there's a need unless one of the parties wishes to offer it.

Judge HASTINGS. Thank you, Mr. Chairman.

The CHAIRMAN. Is there a reason we need to keep the original of this set of notes? Would Mr. Martinez prefer to have those returned to him?

Mr. MARTINEZ. It doesn't matter.

Judge HASTINGS. I have no objection to his original notes being returned, Mr. Chairman.

The CHAIRMAN. I think a copy of that set of notes would be adequate for the committee's purposes.

Mr. GEKAS. We formally request they be returned, the originals, to the witness.

The CHAIRMAN. They will be, and those three exhibits will be admitted.

[The documents referred to were marked House Exhibit Nos. 224, 225, and 226 and were received in evidence.]

Mr. GEKAS. We have no further questions.

The CHAIRMAN. Is there recross-examination, Judge?

Judge HASTINGS. No, Mr. Chairman. Thank you very much.

EXAMINATION BY THE COMMITTEE

The CHAIRMAN. Let me ask just two questions. Mr. Martinez, you indicated Kevin Gordon signed an agreement.

Mr. MARTINEZ. Yes.

The CHAIRMAN. Could you describe to us what the nature of that agreement was and when it was signed?

Mr. MARTINEZ. I believe it was signed on November 20, 1985. It was prepared by myself. And the general nature of the agreement was in exchange for Mr. Gordon not being prosecuted for violations of the narcotics laws, he agreed to cooperate with us and also agreed that he would plead guilty to some type of Federal criminal violation.

The CHAIRMAN. Essentially, a plea arrangement. It's a fairly normal procedure to make that with an undercover individual or a witness that you think may be crucial to a future case?

Mr. MARTINEZ. Normally, plea agreements, Senator, are made after they've been indicted, but sometimes you do enter into plea arrangements with people prior to indictment. So it's not usual, but it is done. And that's what we did with Mr. Gordon.

The CHAIRMAN. There was no indictment pending against Mr. Gordon?

Mr. MARTINEZ. No, there wasn't.

The CHAIRMAN. As you became persuaded that—as I understand your position, you did become persuaded that the source of the leak of this sensitive information was Judge Hastings. Is that correct?

Mr. MARTINEZ. Certainly the facts were pointing to that, yes.

The CHAIRMAN. What did you conclude the judge's motivation for that leak was?

Mr. MARTINEZ. I don't think I've ever really determined that reason, that motivation.

The CHAIRMAN. Would it be your thought that it could have been done inadvertently? I mean, it would seem as though if the judge was the source of this leak, there would be a reason for him to go ahead and give that information to the mayor. Why would he do that, in your opinion?

Mr. MARTINEZ. Now? Based on everything that I know now?

The CHAIRMAN. Yes. What is your opinion of the motivation that could have led him to do that?

Mr. MARTINEZ. My opinion now is that I believe His Honor is a political person, and I believe he likes to do favors and get favors in return. And perhaps that's what he was doing then. That could be—that may not be supported by objective facts, but that is my opinion.

The CHAIRMAN. I appreciate that.

Senator Specter?

The Vice CHAIRMAN. Thank you, Mr. Chairman.

Mr. Martinez, there has been some testimony on your conclusion, opinion, or judgment as to whether Judge Hastings ought to stay on the bench. And I'm not sure that that's relevant or admissible or perhaps a question of weight, but since it's been gone into, I would like to pursue it just for a moment.

Is the sole basis for that conclusion on your part the incident involving the alleged leak of the wiretap information?

Mr. MARTINEZ. Yes and no.

The Vice CHAIRMAN. Yes and no?

Mr. MARTINEZ. If I can explain that, I think by now, Senator, I have through the process of osmosis learned about things that you all are investigating, a little bit here, bits and pieces of the bribery case. But that is all really not my main—those aren't really the main facts that I use to base that conclusion.

My conclusion is that I believe that Judge Hastings as a sitting Federal judge is in a position to be dangerous because we would have to give him confidential law enforcement information, as I had in the past. And that is based—that's my conclusion. Now, I based it on my experience in this particular case, which is based upon certain things: Mr. Clark's statement to not only the FBI and the House and who ever he's told, but also important to me, Mr. Clark telling that to Mr. Gordon in a recorded conversation between him and Mr. Gordon.

I don't know what motivation Mr. Clark has to make this whole thing up, and I have no idea what motivation he had to make it up when he had the conversation with his buddy, Waxy Gordon, which conversation was recorded.

I also know that it is perhaps a coincidence, but seems more than that, that the only substantive conversation that His Honor had with me about the wiretap dealt with Mayor Clark. And the timing of that was about a week or so prior to the disclosure. And the progress report, the third progress report—I believe it was the third progress report—that was presented to His Honor on September 5th indicated that the investigation of Hialeah and Mr. Clark's seeming connections with that case were heating up. So that is just too coincidental for me.

The Vice CHAIRMAN. But you have now summarized briefly the factors that led you to your conclusion——

Mr. MARTINEZ. Yes.

The VICE CHAIRMAN [continuing]. To the alleged wiretap case. And I just wanted to be sure that your opinion, judgment, conclusion about unfitness to be on the bench is related solely to this issue.

Mr. MARTINEZ. Yes, it is.

The Vice CHAIRMAN. Because we have not probed your knowledge of the judge otherwise, and I don't think that we should. I'm just trying to summarize it down to this one incident.

Mr. MARTINEZ. It is. It is primarily based, Senator, on that fact.

The Vice CHAIRMAN. Well, now you're using the word "primarily." What else, if anything?

Mr. MARTINEZ. No, it's just based on that, but I wanted to be fair to Judge Hastings because Mr. Anderson at the House proceedings cross-examined me to the extent that: Well, isn't it true that your opinion may be clouded by other things that you may have heard? And again I would have to answer that question by telling you that that's a possibility. But objectively, if Steve Clark were to come to me and say, "I've made this whole thing up; it didn't come from Judge Hastings," then I would have to tell you that my opinion of Judge Hastings would be completely different.

The Vice CHAIRMAN. Well, you testified in answers to questions from the chairman, I believe your words were that "the evidence pointed to Judge Hastings."

Mr. MARTINEZ. At the beginning of the leak, that's correct.

The Vice CHAIRMAN. Well, I just wondered if your use of the word "pointed" was something less than a very strong conclusion in terms of a prosecutor's judgment that there was a case there beyond a reasonable doubt which warranted prosecution, which was your ultimate conclusion.

Mr. MARTINEZ. I thought the Senator was asking me about my opinion at the time of the leak.

The Vice CHAIRMAN. I see.

Mr. MARTINEZ. And at that time, the way I approached it was, I think it's—in order to explore this properly, we need to assume that Judge Hastings was not the source, in order to arrive at a proper conclusion. So I, because of my personal experience with Judge Hastings, I tried to, to the extent that one can, put that aside, and I gave him the benefit of the doubt. And then when we explored Mr. Gordon and then later on Mr. Clark, it appeared that, in fact, what pointed to Judge Hastings was, in fact, the case that the facts did support that type of a conclusion. But, initially, I approached—I myself personally approached this whole matter giving Judge Hastings the benefit of the doubt, even though objectively at that time it appeared that he was the source of the leak.

The Vice CHAIRMAN. So it was later after you had learned more factors that you came to your ultimate conclusion that it was a case worthy of prosecution with your view, at least, of evidence beyond a reasonable doubt.

Mr. MARTINEZ. Well, I want to make sure that's clear. I did not get—I was not involved in that decision. I never played a role in that, and I have never been placed in the position, Senator, where I myself have reviewed all of the facts and all of the testimony of all the different players in this case. I've never done that.

The Vice CHAIRMAN. So you never made that judgment?

Mr. MARTINEZ. No. That has been, I think—it was suggested perhaps in Judge Hastings' cross-examination that I did. And what happened was that that all was based, I believe, in the examination of Congressman Bryant of me in the House proceedings, in which he asked me for my opinion as to whether or not I agreed with the different reasons set forth in the Department memorandum for declining prosecution of Judge Hastings. And I then told Congressman Bryant that I disagreed with those conclusions.

The Vice Chairman. Thank you very much.

Mr. Martinez. Thank you.

The Chairman. Are there other questions from members of the committee? Senator Rudman?

Senator Rudman. Mr. Martinez, there's been a lot of discussion by counsel with you about this wiretap that the disclosure took place in, and that was between Kevin Gordon and Dick Bonehill. And what that essentially said—and by the way, that took place, according to what this evidence indicates, on the 9th of September. Is that your recollection?

Mr. Martinez. That's correct.

Senator Rudman. And the alleged disclosure took place on the 6th of September at the speech that the judge gave; is that correct?

Mr. Martinez. That's correct.

Senator Rudman. And then this electronic surveillance picks up, amongst other things, this sentence at the beginning of a conversation, quote by Gordon—and we've talked about generally what it said. I think we ought to have here what it did say. It said, "The other thing I want to tell you on this phone, ah, Steve called me over there to tell me that he had heard from Alcee Hastings, you know, a Federal judge. There's some rumor that I was involved with a Clark, Ferguson, and a councilman from Hialeah on some deal, and the only thing that I was doing out in Hialeah was for this guy, you know, out of Houston on a new, ah, on a new item." And there's some more. So that is the electronic surveillance that pointed you towards Judge Hastings?

Mr. Martinez. It may have been longer than that, but I believe it was that conversation.

Senator Rudman. Oh, it's a lot longer than that.

Mr. Martinez. Yes, sir.

Senator Rudman. But that's the only relevant part. It gets into some other things that he was doing. That's in Series 11 of the hearing.

Now, that gave you probable cause to think it was Judge Hastings. But my question is: Did you look at all the other people that might have had some reason to disclose this to Steve Clark?

Mr. Martinez. Well, candidly, at that point in time, I did not know of anybody else who would have a reason to disclose that to Steve Clark.

Senator Rudman. Well, I understand that, but I'm just trying to get the facts here.

Mr. Martinez. Yes.

Senator Rudman. I'm not particularly interested in evaluating anybody's performance. But would it not be normal in this situation to start examining possible relationships between any individuals that had knowledge of the wiretap to the person who disclosed it and the person to whom it was disclosed?

Mr. Martinez. Yes.

Senator **Rudman**. Was that done?

Mr. **Martinez**. Yes. In my mind, it was. The only people who knew about that specific contact was a limited number of people, Senator. The disclosure we had obtained from evidence in that conversation dealt with Waxy, Clark, and Hialeah. And that could only have been—those three things—and I think Cardoso. Those three things, Waxy, Gordon, Hialeah, only came to light in the wiretap very recently. And the people who would know that would have been myself, Santini, and maybe Mazzella. I think Chris Mazzella would know and a couple of other agents. The nucleus group. They—I did not suspect any one of us of having done that. Mr. Rivero, we did not suspect Mr. Rivero. In fact, the evidence bore out that Rivero certainly wasn't the source of it since Gordon told Rivero, Hey, this is what I found out.

Senator **Rudman**. The reason I ask you the question, there's evidence that Mayor Clark had a fairly wide acquaintanceship of people, including a number of FBI agents, former FBI agents, personal relationships with them. How long did you work in the United States Attorney's Office?

Mr. **Martinez**. From September of 1982 through April of 1987.

Senator **Rudman**. Would you say that FBI agents who are working on major cases keep their knowledge absolutely strictly to themselves and never have discussions in the office about cases they are working on with other people?

Mr. **Martinez**. It depends on the degree of sensitivity. It depends on the degree of sensitivity and the specific matter that you're talking about. They do talk among themselves in the squad, and, of course, they also have some conversations among themselves within the office. But, candidly, Senator, with regards to the corruptions area, that was in a different—that was in the basement floor in a corner of the FBI building. It was a small squad. The people who were involved in this case, the core agents, were a small group.

So, yes, as a general matter, conversations are had among agents. I'm aware of that. But as to the sensitive matter in the political corruption field, I would say that that was not the general practice.

Senator **Rudman**. So your testimony is that although it is true that agents tend to discuss interesting cases with each other, that the Public Corruption Section held things very close, and you in your opinion do not believe that they would have discussed it with colleagues within the Miami FBI office who were not involved in that unit. Is that your testimony?

Mr. **Martinez**. I would say that's my opinion, yes, sir.

Senator **Rudman**. But at any rate, at the time that this all occurred, I take it that there was no independent investigation to determine whether Mayor Clark had friends within the law enforcement community that might have been the source of this?

Mr. **Martinez**. This was very specific information that was leaked, and I think a determination was made by all of us—perhaps there is no chart here listing names and cross them off, but people who had access to this specific information at that stage of the investigation were a very small number of us. Very small number of us. And I don't think that we suspected any one of us. I did not get to Mayor Clark. I don't believe Santini and Mazzella did or Rivero. So, yes, a determination was made, but because the amount of people was so small, it was a determination that was pretty much discarded out of hand.

Senator RUDMAN. Well, because you made the assumption—and you may have been correct—that the information was being held within that group?

Mr. MARTINEZ. That's right.

Senator RUDMAN. And, therefore, that was your assumption?

Mr. MARTINEZ. That's right.

Senator RUDMAN. But had your assumption been wrong and had someone leaked it or just discussed it—"leak" is the wrong word—to a colleague who they trusted within the unit, then, of course, your theory wouldn't hold very much water at that point, would it?

Mr. MARTINEZ. It——

Senator RUDMAN. I'm not saying it is or it isn't. I am just trying to assess on this very serious charge whether or not this investigation was full and complete, or whether or not based on this statement by this undercover person who at that point wasn't an undercover person, a person of doubtful repute, the FBI more or less decided there's our man and we're going after this and didn't do anything else. That's my question.

Mr. MARTINEZ. Yes. I think that the only thing that could have been done at that point in time, Senator Rudman—and I was involved in the investigation at that point in time, so I'm also responsible for whatever decision was made then, although I wasn't calling the shots—was to take the best that we had, which was Waxy Gordon, and to approach him and not to go all over the place and try to go on a fishing expedition. So I think, Senator, that the proper course was taken at that point in time, and I think it proved to be correct, proved to be accurate, in that he did then agree to cooperate with us against Mayor Clark. We got Mayor Clark recorded, and Mayor Clark was approached, and then Mayor Clark agreed to cooperate at that point in time.

So I think it was handled properly. That's my opinion.

Senator RUDMAN. Well, I thank you very much for your testimony. I don't mean to suggest that it wasn't, but I think it's incumbent on us in this panel to determine whether or not there are some other possible plausible events that caused this to happen. You know, we're going to hear other witnesses.

Thank you very much.

Mr. MARTINEZ. OK. Thank you, Senator.

The CHAIRMAN. Are there other questions from members of the committee? Senator Bond?

Senator BOND. Just to confirm, I think, what Senator Rudman brought out, you did not make an effort, even within the tightly knit group of agents and other personnel who would have had information about what was learned through your wiretap to assure that no one could have stated or been overheard discussing the conversation which came to your attention through a wiretap that indicated that the cover had been blown, so to speak?

Mr. MARTINEZ. That was—in my opinion, that determination was made, and I would like to explain this because I do think, Senator Rudman, that it is a line that you have to pursue.

The meeting between Mayor Clark and Mr. Rivero and Mr. Gordon was not an intercepted conversation. That was a meeting. So the agents at the plant would not necessarily have had knowledge of that information. The people who would know that information—that was the critical information because that's the information that ties in Clark—was known by myself, it was known by Agent Santini, Agent Mazzella, and I believe two other agents, all within the core group of us.

Now, I didn't do it, Santini didn't do it, Mazzella didn't do it, and I believe that the other two people didn't do it, and I think we were the only ones who knew about it. So we did make a determination that we didn't do it. But it didn't require a scientific analysis. It was—I don't mean to make little of it. It's just we were the only ones who had access to that information, and we knew we didn't do it.

So, yes, a determination was made as to whether it could have come from somebody else, but it was pretty much discarded out of hand because the group was so small.

Senator **Bond**. Were there others who had access to the information of the telephone conversation intercepted from Mr. Ferguson? A telephone call I think was made, recorded at 8:58 a.m.

Mr. **Martinez**. The one on the Friday?

Senator **Bond**. On the date of the alleged disclosure by Judge Hastings to Mayor Clark.

Mr. **Martinez**. Yes. The people who would have had access to that conversation would have been, I believe—and I believe Agent Santini may be in a better position to answer that—the actual agent monitoring that conversation at the plant and Agent Santini. That conversation took place on September 6th. It would not have been summarized until the following progress report. So the people who had knowledge of that—I didn't even have knowledge of that, I don't believe, on Friday. I don't think that matter was brought to my attention until Monday morning. So even that group was smaller. It probably would have been just the monitoring agent on the actual device, and I'm sure Agent Santini. So there would have been two, I think.

The **Chairman**. Are there other questions by members of the committee? Senator Pryor?

Senator **Pryor**. Yes, Mr. Chairman.

I'm a little confused. You just have discussed the, quote, "two other agents" in addition to Mr. Santini, yourself, and others. Now, did you answer this question as to who those might have been?

Mr. **Martinez**. Yes. The agents who interviewed me in the FBI report of March 11th were Agents Guy Nottoli and Frank Navas, and those agents were supporting Agent Santini, but they were primarily responsible for doing the Hialeah end of things. Agent Santini was, in fact, the case agent on the wiretap, and the other two assisted Agent Santini.

Senator **Pryor**. All right, Mr. Martinez. I'm looking in the hearings before the Subcommittee on Criminal Justice. I don't know if this particular reference that I will read from in just a moment or refer to is an exhibit. But on page 77 of this book, there is a memorandum dated August 28, 1986, from Eric Holder, Jr., John Campbell with Public Integrity, to Gerald McDowell, Chief, Public Integrity Section, giving the reasons for not prosecuting for disclosure Judge Alcee Hastings.

Now, you're familiar with this somewhat lengthy memorandum?

Mr. **Martinez**. If that is the same memorandum used by Congressman Bryant——

Senator **Pryor**. Yes, sir.

Mr. **Martinez** [continuing]. Then I'm familiar.

Senator **Pryor**. I think it is. It's on page 77.

Mr. **Martinez**. I'm familiar with it only to that extent. I have not read it.

Senator **Pryor**. Yes, sir. Now, since August 28th, 1986, subsequent to that time, when this memorandum was written, do you know of any fact or any situation that you have heard of or seen since this memorandum of 1986 that might tend to, one, exonerate what the Department felt as to the guilt of Judge Hastings? Do you know of anything that has come up since this memorandum was written?

Mr. **Martinez**. Since August 1986?

Senator **Pryor**. Yes, sir. And that was, you know, three years ago, two-and-a-half years ago.

Mr. **Martinez**. In other words, your question would be: Are there any facts that have come to my attention——

Senator **Pryor**. Correct. Any new facts, any revelations, anything you've heard that might relate——

Mr. **Martinez**. No, Senator, but I do not have the understanding and exposure that you gentleman and the House had with regards to this impeachment inquiry. I do not—I have not read all the record, so I'm not familiar with whatever has been presented.

Senator **Pryor**. All right. So am I correct in presuming that you would answer the question, if I asked you if you knew of anything or had seen any facts or memorandums or heard anything that might tend to exonerate Judge Hastings from the belief that the Department felt he was guilty, even though he would not prosecute? There's nothing new that you've heard since that time of 1986; is that correct?

Mr. **Martinez**. That's correct.

Mr. **Gekas**. Mr. Chairman, we ask for a recess for a vote that has been called in the House, and it is perhaps for lunch.

Senator **Pryor**. Mr. Chairman, that's the only question I have. And so have a good lunch, Congressman.

The **Chairman**. On that basis, are there other questions from the committee? Does this witness need to be kept over the lunch hour?

Senator **Burns**. I just have one.

The **Chairman**. Senator Burns, could you do that quickly? Then we'll dismiss the witness.

Senator **Burns**. OK. Were the transcripts of the telephone conversation which sort of alluded—that Waxy or Mr. Gordon alluded to on the 9th, were those transcripts typed up of that conversation?

Mr. **Martinez**. The transcript that contained the progress report?

Senator **Burns**. No, no.

Mr. **Martinez**. Was a transcript of that conversation typed up?

Senator **Burns**. Yes.

Mr. **Martinez**. At some point in time, I'm sure it was.

Senator BURNS. Who did those?

Mr. MARTINEZ. I do not know that.

Senator BURNS. Okay. Thank you.

The CHAIRMAN. We will recess until 1:30 at this time. This witness is excused unless there is a reason not to.

We appreciate your testimony very much, Mr. Martinez.

Mr. MARTINEZ. Thank you, Senator.

[Whereupon, at 11:47 a.m., the committee recessed, to reconvene at 1:30 p.m., this same day.]

AFTERNOON SESSION

The CHAIRMAN. The committee will reconvene.

PROCEDURAL MATTERS ADDRESSED

The CHAIRMAN. Let me just make one announcement before we proceed with additional House witnesses. The House managers previously advised the committee that in publishing their reports on the matter, they had deleted the names of certain individuals whose names appeared in wiretap reports, I believe was the representation.

The committee has noted that, has reviewed it, and it appears that the materials that have been placed into evidence are the complete reports in unredacted form.

Our intention would be to report the evidence to the Senate as it is submitted to us. If the managers believe that there is something in that material that needs to be deleted, of course we would entertain recommendations with regard to that, but it would need to be specifically identified. It has not been as yet. And we would need to try to get agreement among counsel both for the House and respondent on that.

We just wanted to raise that issue in case there is an intention by the House to propose that; if there are specific things that you would like redacted from any of these materials, we would be glad to consider such a request.

Mr. BRYANT. Mr. Chairman, some of the members of the management team simply wanted me to express that concern to you. It is just a public interest concern. We have no desire to protect any particular interest of the managers in presenting this case. It is just something we noticed——

The CHAIRMAN. We share the same public interest concern, but I think we are not able to deal with a general concern. If there are specific items of evidence or names of individuals who should not be included in the materials that go forward, we would be glad to consider the deletion of those if we can get agreement to do so.

At this time, would the House go forward with its next witness.

Mr. BRYANT. Mr. Chairman, if I may, before calling the next witness, the House would like to raise briefly four matters. First, we are not clear with regard to the videotaped testimony of Ms. Dabreau which has been ordered by the Chair, who will preside during that period.

The CHAIRMAN. I will preside, and I understand there will be at least one, maybe several other Senators who will remain here.

Mr. **Bryant**. Second, we wish to renew our statement of concern about the fact that we still do not have a list of the documents which are going to be offered by the respondent even though we are on the eve of the beginning of his case.

The committee had ordered that those be made available as early as June 21st, and we still do not have them.

The **Chairman**. We agree, and we have urged counsel for respondent to provide those as quickly as possible, and we continue to urge that that be done.

Mr. **Bryant**. Third, we would like to raise the concern that item number 4 in their tendered order of witnesses makes reference to experts that they are trying to decide if they wish to call, and here we are again, on the eve of the beginning of their case, and the House has no notice of any experts they intend to call or what kind of experts they may be or specifically who they are.

The **Chairman**. Could counsel for respondent give any additional information as to respondent's intention with regard to expert witnesses? There is a very general reference in that document about possibly calling expert witnesses.

Mr. **Anderson**. We obviously cannot commission experts. The obvious ones, we are at present trying to weigh whether it is even worth calling a counter-linguist. We are looking at the possibility of calling someone familiar with the telecommunications and HOBIS systems—again, if I had someone to tell you about, I'd tell you about them now—and the possibility of, depending on how it develops, a prosecutorial standards person.

Those are, I think, the only ones—there is nothing in the forensics that troubles us at all.

The **Chairman**. We will plan, at the time the House begins its case, to take the names that have been submitted by respondent as their list of witnesses. And if respondent does wish to add anybody else, we would require that it be done by then.

Mr. **Bryant**. Fourth, Mr. Chairman, the list of witnesses tendered by the respondent lists Alcee Hastings as testifying two different times. We wish to call to the committee's attention that in the original of whether or not to bifurcate this proceeding into a trial related to the bribery-conspiracy allegations and another hearing related to the wiretap, that the respondent objected because it did not want the respondent's client, that is to say, Judge Hastings, to have to testify two different times. Accordingly, the decision was made not to bifurcate the trial.

Now they propose that he be allowed to testify two different times. We suggest that is highly irregular and oppose it and would like for the committee to consider issuing a ruling on that at the earliest possible time.

Mr. **Anderson**. May I respond briefly?

The **Chairman**. Yes, you may.

Mr. **Anderson**. We oppose the bifurcated trial because we think the two matters are related, and since the House chose to indict as it did, it should be one trial. The committee has been, I think correctly so, solicitous of the House's desire to order its proof in such a manner as to present two opening statements. The committee has, notwithstanding its general view against recalling witnesses, suggested at the House's urging that my cross-examination of H. Paul

Rico be limited, and he be recalled, so that we did not clutter those two issues.

What we have proposed is we think an orderly response to the order of proof adopted by the House. I cannot see how Judge Hastings will be available to be cross-examined at whatever length the managers may propose, on all topics subject to the Articles of proof. This is a matter of simply ordering the proof in a way which we think makes a certain amount of sense.

The House has presented its proof in separate fashion. We simply ask the same prerogative.

The CHAIRMAN. We would intend—we have tried to allow the House to present its case as it saw fit, and we will try to do the same with respondent in the presentation of its case. I do not see any major prejudice to the House in permitting Judge Hastings to testify twice. Obviously, the testimony on the count that relates to the wiretap, we would not want to get cross-examination there that obviously pertained to the other count.

So we will try to keep the direct and the cross-examination separate in the two cases, but I think there is not any great prejudice to the House from having the witness present himself twice.

Mr. BRYANT. Well, might the respondent also be instructed that his direct examination and his direct testimony will have to be limited to the particular portion of the case——

The CHAIRMAN. Yes. The respondent's direct examination will focus on the counts being considered at that time, and the cross-examination as well.

Mr. BRYANT. Finally, Mr. Chairman, the House would like to express a very sincere concern and appeal to the Chair to consider this expression, with regard to two important evidentiary matters, one being the method of handling this witness, Ms. Dabreau, and the other being related to an important evidentiary offer which we wish to make, which you ruled we would not be allowed to make.

We feel that we have not been permitted to make our arguments to the chairman or to the committee in advance of those decisions and have been left in a position of having to object strenuously after the decision is announced, which is awkward; it grates on the nerves no doubt of the committee, but we are left with no other way to make a record and no other way to make our views known.

We would ask in the future, if possible, please allow us to offer our views and our legal arguments in advance of these decision so that we will have the opportunity to persuade you that perhaps our position is right, and I think it will result in a lot less aggravation on both sides.

The CHAIRMAN. I think that is a constructive suggestion.

Would the House go forward with its next witness?

Mr. BRYANT. The House calls Geoffrey Santini.

The CHAIRMAN. Would you raise your right hand, Mr. Santini?

Do you, Geoffrey Santini, swear and affirm that the evidence you shall give in the case now pending between the United States and Judge Alcee L. Hastings shall be the truth, the whole truth and nothing but the truth, so help you God.

Mr. SANTINI. Yes, sir.

The CHAIRMAN. Please be seated.

TESTIMONY OF GEOFFREY C. SANTINI

DIRECT EXAMINATION

Mr. **SYNAR**. Good afternoon, Mr. Santini. Please state your full name for the record.

Mr. **SANTINI**. Geoffrey C. Santini.

Mr. **SYNAR**. Mr. Santini, how are you employed?

Mr. **SANTINI**. I am an agent with the Federal Bureau of Investigation.

Mr. **SYNAR**. And how long have you been a special agent?

Mr. **SANTINI**. A little over 14 years.

Mr. **SYNAR**. And where are you presently assigned?

Mr. **SANTINI**. I am currently assigned to the New Orleans Division of the FBI.

Mr. **SYNAR**. Mr. Santini, if you will pull that microphone up, or pull your chair up a little bit closer and pull the microphone down, I think it will assist us.

Now, Agent Santini, turning your attention to July 1985, at that time, where were you assigned?

Mr. **SANTINI**. In July 1985, I was assigned to the Miami Division of the FBI.

Mr. **SYNAR**. And to what squad were you assigned?

Mr. **SANTINI**. I was assigned to Labor Racketeering and Public Corruption Squad.

Mr. **SYNAR**. Now, in July 1985, when working on the Public Corruption and Labor Racketeering Squad in Miami, what case were you assigned to?

Mr. **SANTINI**. I was assigned to two separate and major investigations, the first one being earlier in 1985, was an investigation concerning public corruption in the City of Hialeah. Later on that year, I received an additional case, known as the Longshoremen's Union case, which is referred to in this situation.

Mr. **SYNAR**. All right. What was your role in those investigations?

Mr. **SANTINI**. I was case agent on both investigations.

Mr. **SYNAR**. Now, when you were working on the Longshoreman and zoning investigation, who was your FBI supervisor?

Mr. **SANTINI**. Christopher Mazzella.

Mr. **SYNAR**. And who was the assistant United States Attorney assigned to that case?

Mr. **SANTINI**. Roberto Martinez.

Mr. **SYNAR**. Now, Agent Santini, we have heard testimony earlier today by an earlier witness that in July 1985 the Government applied for a wiretap in furtherance of its investigation into union corruption at the Miami docks. What role did you play in preparing the application for that wiretap?

Mr. **SANTINI**. As case agent, I prepared the probable cause section, which was information that I was receiving from confidential sources, including Mr. Johnny Rivero.

I would like to point out to this body that Mr. Rivero died in February of this year. Prior to that time, he authorized the FBI to use his name in this proceeding.

I obtained this information from Mr. Rivero from other sources that I had. This information was supplied to Roberto Martinez, and both he and I prepared a Title III affidavit together.

Mr. SYNAR. All right. Now, did you actually present the application to Judge Hastings along with the Assistant United States Attorney Martinez?

Mr. SANTINI. Yes, sir.

Mr. SYNAR. And what day was the wiretap authorized by Judge Hastings?

Mr. SANTINI. On July 15, 1985.

Mr. SYNAR. Now, Agent Santini, I would like to now turn to the 30-day extension of that wiretap. Did you participate in the application of that 30-day extension?

Mr. SANTINI. Yes, sir, I did.

Mr. SYNAR. And what was your role in that application?

Mr. SANTINI. Again, I supplied the probable cause section to Mr. Martinez, which was information that I was receiving through my investigations which was placed into the Title III affidavit presented before Judge Hastings.

Mr. SYNAR. All right. Now, could you please explain to the committee what references were made to Mayor Steve Clark in the application for a 30-day extension of the wiretap and in the supporting affidavit, both of which were submitted to Judge Hastings?

Mr. SANTINI. There were a number of direct references which included Mayor Clark. One of these references referred to Kevin Gordon—I might add that this is in a footnote of a conversation that was held between Mr. Kevin Gordon and Mr. Johnny Rivero. During that conversation, Mr. Gordon—known as "Waxy"—advised our informant that he had Mayor Clark in his pocket.

Also during that conversation he made reference to a $40,000 contribution that he had obtained for Mayor Clark. Additionally, he made reference to the fact that Peter Ferguson was the campaign manager for Mayor Clark.

There was one other reference in connection with narcotics off-loading and that Mr. Gordon was going to approach Mayor Clark for assistance. I might add at this point that when we ultimately had Mr. Gordon cooperating with us, I asked him about these situations. The $40,000 reference——

Mr. ANDERSON. I object on the grounds of hearsay here. This is not relevant to this case. They are rehabilitating a dead witness who I have never had an opportunity to cross-examine. I think that is unfair.

The CHAIRMAN. The objection will be overruled. The witness can testify as to his recollection.

Mr. SANTINI. Yes, Senator. I made direct reference to this in a very covert way because at the time, Mr. Gordon didn't know that the informant was cooperating or who the informant was.

I asked him about the $40,000. He admitted that that was an enhanced amount. The true amount was $4,000. Regarding having Mayor Clark in his hip pocket as well as the reference to off-loading of narcotics, he basically stated that that was an enhancement to try to gain additional confidence of who we believed Johnny Rivero was a money man involved in narcotics. That's basically what happened there.

Mr. **Synar**. Now, Agent Santini, did you actually assist in presenting the application for extension to Judge Hastings?

Mr. **Santini**. Yes, I did.

Mr. **Synar**. And when did this meeting occur?

Mr. **Santini**. On August 15, 1985.

Mr. **Synar**. And who accompanied you in that meeting?

Mr. **Santini**. On that extension, Assistant United States Attorney at that time, who was Jon May.

Mr. **Synar**. And where did the meeting with Judge Hastings occur?

Mr. **Santini**. In Judge Hastings' chambers.

Mr. **Synar**. Now, at the time, did you have a conversation with Judge Hastings about the information contained in the application for the 30-day extension of the wiretap and the supporting affidavit?

Mr. **Santini**. Yes, sir, I did.

Mr. **Synar**. Now, Agent Santini, could you please explain to the committee the substance of that conversation with Judge Hastings at that time?

Mr. **Santini**. When myself and Jon May entered the judge's chambers, Jon May handed his honor the application and affidavit. I sat down directly next to the judge.

At the beginning, he stated that he thought Waxy Gordon was the radio station, which is a radio station in Miami. Thereafter, we discussed minimization regarding the telephones that we were monitoring. Included in these telephones were a City of Surfside, which there were numerous lines that were being monitored, and I explained to him that we had cut down the monitoring of these phones, and we minimized only during the time that Kevin Gordon was on the scene that we actually listened to the calls; we did not intercept just indiscriminately people that were at city hall.

Shortly thereafter during this conversation, the judge stated to me that Waxy Gordon is like the radio station—if he doesn't keep his mouth shut, he is going to get everyone into trouble including the mayor.

Mr. **Synar**. Now, at that time, Agent Santini, who did you believe Judge Hastings was referring to when he said "including the mayor"?

Mr. **Santini**. Mayor Steve Clark.

Mr. **Synar**. Now, at that time, was there a radio station in Miami with the call letters WAXY?

Mr. **Santini**. Yes, sir, there is.

Mr. **Synar**. Now, did Judge Hastings, Agent Santini, make any other comments regarding the substance of the affidavit and application other than his reference to Waxy Gordon getting everyone in trouble including the mayor?

Mr. **Santini**. No, sir.

Mr. **Synar**. Now, to the best of your recollection, Agent Santini, when did Judge Hastings actually receive the application for the 30-day extension of the wiretap and the supporting affidavits?

Mr. **Santini**. To the best of my recollection, he would have had to have received the affidavit prior to my signing the affidavit, mainly because of his statement to me that when he first began reading the affidavit, it made me aware that he had received it in advance as he had done on the first application, and was fully aware of what was contained in that affidavit.

Mr. **Synar**. Now, on what day did your conversation with Judge Hastings occur?

Mr. **Santini**. That would have been on August 15, 1985.

Mr. **Synar**. Now, Agent Santini, did you also have a part in the FBI investigation into police corruption in the North Bay Village, which arose because of information learned through a wiretap?

Mr. **Santini**. Yes, sir, I was.

Mr. **Synar**. Now, during the FBI's investigation into union corruption at the Miami docks, zoning corruption at Hialeah, and police corruption at North Bay Village, what was your relationship to the FBI's confidential informant involved in those cases, Johnny Rivero?

Mr. **Santini**. Mr. Rivero had—I had met Mr. Rivero in 1982, and he was involved in another investigation. Later on, I was transferred to the Miami Division, and in 1984, due to my past knowledge of Mr. Rivero, and knowing that because this investigation was sensitive, it would take a special individual to infiltrate the docks because of the past activities of the FBI on those docks, that I contacted him and asked him if he would help me with this investigation.

He ultimately did agree to act in an undercover capacity for me and the FBI, and I must point out that he was under no obligation to do this; he was under no physical threat, he was under no trouble as far as him having criminal charges against him. So he did this of his own free will and initiation by us.

Mr. **Synar**. What type of contact did you have with Mr. Rivero during the investigation which was the subject of the wiretap, Agent Santini?

Mr. **Santini**. I would have constant contact with Mr. Rivero, both day and night.

Mr. **Synar**. What kind of contact, though?

Mr. **Santini**. I would direct him, basically, on everything that we wanted to do. I was his main contact agent, early on especially. Later on, when the investigation started to stem out, and we began preparing the wiretap, there were other agents assigned. However, I would be the main agent that directed him, that gave him his orders and debriefed him when these things occurred.

Mr. **Synar**. So Johnny Rivero reported directly to you what he had learned; correct?

Mr. **Santini**. Yes, sir.

Mr. **Synar**. Now, did Johnny Rivero report his contacts with Waxy Gordon and other persons involving the union, the zoning and the North Bay Village activities——

Mr. **Santini**. Yes, sir, he did.

Mr. **Synar** [continuing]. To anyone else?

Mr. **Santini**. He reported them also to an Agent Guy Nottoli, and Agent Frank Navas who, when things began to get very—numerous other investigations involved—I couldn't be with him every minute, so they began taking over the debriefing after each occurrence of something that we were interested in.

Early on also, there was another agent who retired shortly after the case began; his name was Robert Kelly.

Mr. **Synar**. All right. Now, could you please explain to the committee, Agent Santini, the danger that Johnny Rivero was in when dealing with persons who were subjects to these three investigations being conducted by the FBI at this time?

Mr. **Santini**. Regarding the Longshoremen's investigation, the Federal Bureau of Investigation back in the early 1970s had an undercover operation on the Miami docks which ultimately ended up in the major ports of the United States on the eastern coast, called UNIRAC. This investigation resulted in the conviction of many union officials and people connected with the docks.

In that investigation, we learned that the Longshoremen's Union was controlled by the organized crime figures. When Mr. Rivero began this operation in Miami, he was dealing with some of those same individuals, either them directly or individuals that were related to the individuals who were currently in jail on the previous charges. These individuals were prone to violence; it was documented in the previous case of their potential for violence, and in that investigation, because the FBI couldn't follow him onto the docks, he would have been out on the docks by himself, exposed to all the dangers from these individuals.

Regarding the North Bay Village investigation, the police officers that were involved in this matter, we had received information of them being corrupt for many years—and I might add these were only police officers, not the entire police department. These individuals were armed police officers. They thought that they were dealing with narcotics dealers, and in that scenario, many things could have happened including when we actually off-loaded dummy cocaine, they could have arrested the individuals and/or shot them and taken the narcotics.

This was a very high-risk investigation, knowing the propensity of these officers to be involved in criminal activities.

Regarding the Hialeah investigation, although there wasn't in the political realm individuals of high violence, the possibility of those individuals knowing the other subjects which related back to the docks, if in fact Mr. Rivero was exposed in any way, he would face grave danger from the backlash of that contact.

Mr. **Synar**. Agent Santini, what facts indicating the danger to Johnny Rivero were set forth in the applications for the wiretap and the progress reports submitted to Judge Hastings?

Mr. **Santini**. Actually, from the very first day of investigation, we learned that the International Longshoremen's Union was extremely wary of anyone that tried to gain access to employment on the docks through the union. Many, many times during the investigation Mr. Rivero was patted down for recording equipment. He was actually patted down on one occasion by an organized crime figure who we were going to have to make a payoff to obtain employment.

The North Bay Village police officers that we ultimately convicted in this matter were in this same restaurant, observing this activity. He was patted down by many other individuals that were involved in this operation.

Mr. **Synar**. Agent Santini, now, that description that you just gave us, were those in the progress reports to Judge Hastings?

Mr. **Santini**. Yes, sir. There was reference to the danger that the confidential informant was facing and as to the specific individuals that had patted him down.

Mr. **Synar**. Okay. Now I'd like to turn to the actual wiretap through which the FBI monitored the calls of the persons being investigated. Agent Santini, what was your role with respect to the wiretap authorized by Judge Hastings?

Mr. **Santini**. I was in effect the supervising agent, handling the contacts between the agents that monitored the calls—they would contact me if in fact a call of interest was received, and I would take action on that call. In my normal course of business, if something like, again—say that was important—I would be told right away, immediately. I would take action immediately, in the normal course of business. The following morning, I would obtain all tapes of the previous day and night. Myself and the other agents that I mentioned would review each and every one of these tapes to check every call that was incoming and outgoing to determine what related to our investigation.

Mr. **Synar**. So they reported directly to you——

Mr. **Santini**. Yes.

Mr. **Synar** [continuing]. And you listened to the tapes each morning?

Mr. **Santini**. Yes.

Mr. **Synar**. Now, specifically, I'd like to direct your attention to September 6, 1985. What call did the FBI monitor at 8:58 a.m. on that day?

Mr. **Santini**. On the morning of 8:58, an agent received a telephone call between Kevin Gordon and an individual later identified to me by the agent that intercepted the call as Peter Ferguson.

Mr. **Synar**. Now, for the members of the committee, Kevin Gordon is Waxy Gordon; correct?

Mr. **Santini**. Yes, he is.

Mr. **Synar**. All right. Now, could you please identify Peter Ferguson for the committee?

Mr. **Santini**. Peter Ferguson was described in the first affidavit that I presented to Judge Hastings as the campaign manager for Steve Clark. He also was described as being involved in fiscal operations in the Port of Miami.

Mr. **Synar**. Now let me hand you what has been marked as House Exhibits 185A and 185B. Could you identify these exhibits for the committee?

Mr. **Santini**. Yes, sir. 185A is a cassette recording of a telephone call obtained on September 6, 1989 between Peter Ferguson and Kevin Gordon.

Mr. **Synar**. Is that 1989 or 1985?

Mr. **Santini**. Excuse me. I'm sorry. The recording date is 1985.

Mr. **Synar**. Nineteen eighty-five.

Mr. **Santini**. Exhibit 185B is a transcript of that telephone call.

Mr. **Synar**. Now, Agent Santini, when did you first hear this taped conversation?

Mr. **Santini**. That specific tape, I believe I heard it the following morning. However, when Agent Donnie Smith, who intercepted the telephone call, called me just shortly after it happened, he told me basically what had happened and referred that he had recognized the voice of Peter Ferguson, because he did not identify himself on the tape.

Mr. **Synar**. Mr. Chairman, we now would like to play the 8:58 a.m. tape, and each committee member has a copy of the transcript behind Tab 185 in their House exhibit notebook.

The **Chairman**. Without objection—is there objection to these two exhibits?

Mr. **Anderson**. No.

The **Chairman**. They will be admitted into evidence.

They can be played.

[The documents referred to were marked House Exhibit Nos. 185A and 185B and were received in evidence.]

[A tape recording was played at this point.]

September 6, 1985, 8:58 a.m. conversation between Waxy Gordon and Peter Ferguson.

F - Peter Ferguson
U - Unintelligible
W - "Waxy" Gordon

F: Hello.

U: ______

F: Good morning. May I speak to Kevin Gordon please?

U: Yes, hold on. Kevin . . .

(put on hold).

W: Gordon speaking.

F: Waxy.

W: Yeah.

F: Mayor Clark would like to see you at the MOC at 11:30.

W: The where?

F: Ah . . . Miami Outboard.

W: 11:30?

F: Yeah.

W: I'll be there.

F: Can you make it?

W: Yeah.

F: Good. Cause the Mayor wants to see you about something. He wants to ask you how to, how to mail a cult some gang mails. Bring a, bring a half a pound of clutz will you?

W: (laughs) Okay. 11:30.

F: Thank you.

W: Right-o. Bye.

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EXHIBIT
185b
HOUSE

Mr. Synar. Now, Agent Santini, in the tape we just heard, Peter Ferguson tells Waxy Gordon that Mayor Clark would like to see Mr. Gordon at the MOC at 11:30 a.m.

Could you identify and describe to the committee the place Mr. Ferguson is referring to when he uses the abbreviation MOC?

Mr. Santini. Yes. That is the Miami Outboard Club in Miami, Florida. It's a restaurant and lounge.

Mr. Synar. All right. Now, Agent Santini, I would like now to direct your attention to September 9, 1985. On that morning, what were you doing with respect to the pending investigations which were the subject of the wiretap?

Mr. Santini. Myself and Christopher Mazzella, who was my supervisor, Roberto Martinez, and numerous other agents that were involved in the North Bay Village investigation were having a meeting in the FBI office. This meeting was to set up the first scenario to off-load narcotics through the North Bay Village police officers.

Mr. Synar. All right. Now, during that meeting, Agent Santini, what occurred with respect to the wiretap?

Mr. Santini. Shortly after the meeting began, I was called out of the room for a telephone call. An agent who was at the monitoring location called me and stated that they had just received a telephone call where it appeared that Judge Hastings had leaked the wire tap.

My immediate instructions to him was to remove the original tape from the recording equipment, to make copies of those tapes, that one tape, to seal the original tape, and to bring both the original log and a copy of the tape to the Miami office to the meeting we were having.

I also told him to keep it quiet and to tell the agent that monitored that call, who was Mr. Genocore, not to say anything about this until we got back to him.

Shortly thereafter, Mr. McDonald appeared at the Miami office of the FBI where myself and these other individuals were meeting, and he played the tape for us.

Mr. Synar. Agent Santini, let me hand you what has been marked as House Exhibit 186 A and B and House Exhibit 187 A and B, and if you could please identify these for the committee.

Mr. Santini. Yes, sir.

This is a cassette copy of the telephone call on September 9, 1985, between Mr. Gordon and Mr. Richard Bonehill. 186B is a transcript of that conversation.

Mr. Synar. And then 187, which is also on that tape?

Mr. Santini. The 187 is an additional transcript. There were actually two calls that led up—one call previous to the one that we actually intercepted that I just described to you from Agent McDonald.

Mr. Synar. Now, Agent Santini, what is the time of the telephone call? What is the time of the telephone call reflected in House Exhibits 186 A and B and who is the call between?

Mr. Santini. The first telephone call was at 9:23 a.m. That telephone call was between Kevin Gordon Waxy and a Mr. Richard Bonehill.

Mr. Synar. And for the members of the committee, Agent Santini, could you please identify Richard Bonehill?

Mr. Santini. Mr. Bonehill at that time was an attorney in Miami, Florida.

Mr. Synar. Now, had you obtained court authority to listen to a call between Waxy Gordon and someone who may have been his attorney?

Mr. Santini. Yes, we did.

Mr. Synar. All right. Now, what is the time of the telephone call reflected in House Exhibits 187A and B and who is that call between?

Mr. Santini. That is again on September 9th at 11:04 a.m. The telephone call is between Waxy Gordon and Mr. Richard Bonehill.

Mr. Synar. Now, Mr. Chairman, we would now like to play House Exhibits 186 and 187. A copy of the transcript of each of the recorded telephone calls are located between the tabs that you have in front of you, 186 and 187 of each of the member's exhibits notebooks. I would like to indicate that the transcripts are only the relevant portions of the tape recordings. We will play, however, the entire tape of each conversation.

The Chairman. Is there objection to House Exhibits 186A and B and 187A and B?

Mr. Anderson. Well, certainly not to the A's. My standing objection on transcripts, but otherwise, no.

The Chairman. It will be admitted.

[The documents referred to were marked House Exhibit Nos. 186A and 186B, and 187A and 187B and were received in evidence.]

The Chairman. Could counsel indicate when we get to the portion of the tape—I gather that you are going to play more tape than we have transcript for. Is that correct?

Mr. Synar. There is only a couple of introductory remarks. It will be very clear if you follow the script.

[Tape recordings were played at this point.]

September 9, 1985 - 9:23 a.m. conversation between Gordon and Bonehill.

W - "Waxy" Gordon
U - Unintelligible
B - Bonehill

U: I was disconnected. I was waiting to speak to _______.

U: Okay.

W: Gordon speaking.

B: How you doing Kevy?

W: Hey Dick. how you doing? I don't, ah, know about the bank yet. I won't be able to call bookkeeping until 10 o'clock.

B: Uh huh.

W: Okay? I'll give a . . .

B: What happened Friday?

W: Well, you know they were going to wire-fake the check again to see if the money was there.

B: Well, no. You were going, ah, going to meet with Clark or something?

W: Oh, ya. Uh hum. I can't go into that on this phone.

B: Oh.

W: Okay?

B: Uh huh.

W: Uh huh. Wasn't good news. (ha ha) Wasn't bad but it was in fact it was probably a favor. Just tipped me off to . . . I'll let you know when I see you, okay?

B: Okay.

W: Okay. You gonna, you want me to make that call now (pause) to, ah, zoning, to Gonzales?

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EXHIBIT
186b
HOUSE

B: I would just call and check and see, make sure ______ wasn't there.

W: You gonna do that?

B: Yeah. Yeah. I was gonna call you back.

W: Okay. Why don't ya do that?

B: Okay.

W: Are you at home?

B: Yeah.

W: Well, okay. I'll . . . I'll probably call you in a half hour. Okay?

B: Yeah. If, if you can, a get out to a -

W: Yeah.

B: telephone.

W: Yeah. I know it.

B: Okay.

W: Okay, babe. Bye.

B: Bye.

September 9, 1985, 11:04 a.m. telephone conversation between Gordon and Bonehill.

W - "Waxy" Gordon
B - Dick Bonehill

W: Uh, the other thing I want to tell you on this phone. Ah . . . Steve called me over there to tell me that he had heard from Alcee Hastings, you know a Federal Judge. There's some rumor that I was involved with, uh, Clark, Ferguson and a councilman from Hialeah on some deal . . . and the only thing that I was doing out in Hialeah was for this guy, you know, out of Houston, on a new, uh, on a new item.

And I says, you know, he wanted 'certain things done in a manner, uh, you know, normal, influence and what have you. And whatever . . . But I can't see him being that and then giving me a bad check. You know what I'm saying? It doesn't, uh, you know if they're setting me up they're gonna make sure the funds are good. You know what I'm saying?

B: Well, he brings you back, uh, cash to make the check good, marked money.

W: What? You mean that me, to take the check back to him and then he'd give me another package, of you know, with cash, man?

B: Um-hum.

W: Well, I still haven't done anything illegal, you know. I haven't

B: He said that Clark was involved too?

W: Yeah. And he's not.

B: Alcee says -

W: Huh?

B: I have big ears.

W: No. He's not involved with it you know. He, uh, he knows me and he was good enough for him to get it. But I mean for a Federal Judge to get it, its got to be pretty high up in the Justice Department or someplace, right?

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EXHIBIT
187b
HOUSE

B: Yeah. No. They had that investigation going out in Hialeah.

W: I see.

B: About the zoning vote.

W: Oh, yeah. That's what I was involved in.

B: Huh?

W: Thats, a, you know, the the problem that I had out there was for zoning which I was trying to mitigate.

B: Well, they had a couple of councilmen and, uh, a couple of real estate people, and remember, there was a big deal in the paper about it uh about six (6) or seven (7) months ago?

W: I thought that pretty much quieted down?

B: Nah.

W: Well - I wonder why they put my name to it! I just uh, figured out that, uh, something was wrong here if the checks no good. But I figured with the che, the, you know, I couldn't understand a check being bad if they were trying to do business, you know, and see how I operated. I didn't even consider the idea, bringing back the check and getting cash. Is that, you know, in your expereince, is that a method of operation of them?

B: Mmmm-huh. Yeah.

W: Oh God. Ok. Uh, as far as, uh, oh, Did you call over there?

Mr. **Synar**. Agent Santini, when did you first listen to these tapes?

Mr. **Santini**. The tape was brought in by Agent McDonald, the second tape. And he—we played it. It was shortly after it occurred, I would say probably within an hour.

Mr. **Synar**. All right. Now, Agent Santini, how did that information contained in those tape recordings affect Johnny Rivero?

Mr. **Santini**. Well, at this point from what Mr. Gordon was saying, we did not know the true scope of what the possible leak may be. So I immediately gained access to Mr. Rivero. I instructed him to try to contact Mr. Gordon, basically because of on the morning of September 6, 1985, when Mr. Gordon went to meet Mr. Clark, I had received information that Callahan had sent Mr. Rivero down to the same Miami Outboard Club to try to determine what was going on.

After that meeting, Mr. Gordon was extremely upset and somewhat avoided Mr. Rivero. So when we received this telephone call, I immediately made contact with Mr. Rivero and told him to watch out for himself, that we had experienced a problem. I did not tell him what that problem was. I basically said that there could be a problem, to watch yourself, and try to reach out to Mr. Gordon and find out what is going on.

We immediately sent agents up to his location to cover him, and I spent many a night after that with him.

Mr. **Synar**. All right. Now, Agent Santini, to make this clear, you told him to be careful, you asked him to find out what was going on through Waxy Gordon, and you testified just then that you told him that there was a problem.

Did you tell him about the leak?

Mr. **Santini**. No, sir. I did not.

Mr. **Synar**. All right. Now, what did Johnny Rivero report back to you?

Mr. **Santini**. That on the following day he finally got hold of Mr. Gordon. I believe he originally talked to him at city hall, and on that day Mr. Gordon had a meeting with another individual on another criminal matter that we were looking at. And they agreed to meet at the same, at the restaurant in New Orleans, separate from the Miami Outboard Club.

Mr. Rivero went there, and he was covered by a number of agents. He originally sat down with Mr. Gordon and Mr. Gordon was extremely upset. He first off began to pat Mr. Gordon—excuse me—Mr. Rivero down to see—and asked him if he had a recording device. Thereafter, he told him that he had met with Mayor Clark on the previous Friday. That Mayor Clark had asked—had talked to a Federal judge. That Federal judge had asked him if he knew Kevin Gordon, Waxy.

Mayor Clark then told him that the judge had told him that his home telephone and Surfside phones were wired. Gordon then told him that he's extremely upset, he didn't know where this information was coming from. And immediately Mr. Rivero contacted me from that restaurant—I was in the FBI office—and told me what had just occurred.

I immediately instructed him to gain as much information about what had happened from him and to immediately leave the presence of Mr. Gordon and clean himself and travel to an off-site, what we call a safe house. He did that, and I immediately went there to meet with him.

Mr. SYNAR. Now, you testified, Agent Santini, with respect to the additional danger Johnny Rivero was in due to this leak of information. What additional danger did the two undercover agents in the investigation face?

Mr. SANTINI. Basically, the undercover agents face the same dangers that Mr. Rivero did. They were both dealing with, especially the agents involved in the North Bay Village matter, were all dealing with armed police officers who all thought they were narcotics dealers. The other undercover agent was dealing in the corruption area in Hialeah could have also been exposed to the same danger because the individuals in Hialeah, through Kevin Gordon and the other individuals, could have all sifted back to the same people. And through that, they all were exposed to the same danger that Mr. Rivero was.

Mr. SYNAR. Now, Agent Santini, I would like now to direct your attention to the period prior to September 6, 1985, specifically in July and August of that year.

At that time, was there any evidence, whatsoever, of a leak in the FBI's investigation into union corruption, zoning corruption, and police corruption?

Mr. SANTINI. No, sir. There was not.

Mr. SYNAR. Now, specifically prior to September 6, 1985, was there any change in the behavior of Kevin Waxy Gordon which indicated that there may have been a leak of confidential information obtained through a wiretap?

Mr. SANTINI. No, sir.

Mr. SYNAR. Now, when was the first time that such a change of behavior occurred?

Mr. SANTINI. After the meeting on September 6th at the Miami Outboard Club between Mayor Clark and Kevin Gordon, which Johnny Rivero attended, and from that date forward problems began. Mr. Gordon was extremely wary of Mr. Rivero as well as very extremely wary of Gino, the undercover agent involved in this zoning matter.

Mr. SYNAR. Agent Santini, up to September 6th, how was the investigation going?

Mr. SANTINI. It was proceeding along with no problems. We were moving along and discovering additional crimes in many areas. There was no indication that we had any problem at all.

Mr. SYNAR. One final question, Agent Santini, and we appreciate you being here today, would you present an application for a wiretap to Judge Hastings at this time?

Mr. ANDERSON. Objection, Mr. Chairman. That is speculation. I assume the agent will comply with the law and the Senate will make the decision whether he will present applications in the future.

The CHAIRMAN. The objection will be overruled.

If the witness has an opinion, he can state it.

Mr. SANTINI. Yes, Senator.

If I, in fact, was faced with the situation where I again was a case agent on a sensitive investigation, as this was, and the fact that I would be placing undercover agents into dangerous situations who, in fact, take an oath of office to do that for the FBI and the Government, as well as confidential informants who trust me and other agents, I could not in all good conscience put them in that situation. So I would not take any affidavit to Judge Hastings.

Mr. **Synar**. Thank you very much, Agent Santini.

The **Chairman**. Is there cross-examination of the witness?

Mr. **Anderson**. Yes, Mr. Chairman.

Give me a moment to get set up.

Mr. Chairman, at the outset to dispose of a matter, I would ask that the committee would take notice and determine that Johnny Rivero is dead. I believe both sides have been supplied with a copy of a death certificate. I want to establish his unavailability as a witness so as I proceed we can at least avoid the kind of hearsay problem that might otherwise trouble me.

The **Chairman**. I do take notice of that fact.

Mr. **Anderson**. Thank you, Mr. Chairman.

CROSS EXAMINATION

Now, Mr. Santini, let me begin with a couple of new things that I have learned today.

You did testify in Atlanta before a committee of the Judicial Council of the Eleventh Circuit concerning these matters, didn't you, sir?

Mr. **Santini**. Yes, sir. I did.

Mr. **Anderson**. And you did testify last year before a subcommittee of the House of Representatives, didn't you?

Mr. **Santini**. Yes, sir. I did.

Mr. **Anderson**. Now, on either of those occasions did you disclose these pre-death conversations with Kevin Gordon where he announced that his stories with regard to the mayor had been enhanced?

Mr. **Santini**. I was never asked those questions.

Mr. **Anderson**. Yes, sir. But did you——

Mr. **Santini**. No, sir. I did not.

Mr. **Anderson**. Now, you also, again I think as a new matter, indicated that the Title III order had authorized you to intercept attorney/client communications.

I wonder if you would help me on that and tell me where I should look to find that?

Mr. **Santini**. Again, I would have to refer that to Mr. Martinez. However, we were aware that Mr. Bonehill was potentially involved in criminal activities and case fixing.

Mr. **Anderson**. Well, if the committee would refer to Mr. Martinez's written immunization instructions, which are in evidence, would that be the source where they would look for such an exception?

Mr. **Santini**. I believe, sir, that that would come under the situation where they intercept a telephone call, based on what I was telling the agents to monitor, based on what I was learning on the street from Johnny Rivero and his dealings with Kevin Gordon, early on in the investigation it came out that Mr. Gordon and Mr. Bonehill fixed a case that Mr. Gordon was involved in. Based on that information, after discussing with Roberto Martinez, I instructed the agents to listen for further evidence of that.

Mr. **Anderson**. I thought I heard you testify earlier that the court had authorized you to intercept these communications. And I am trying to find out whether that is a matter which we should find in your progress report or something where Judge Hastings explicitly said, sure, go ahead and intercept attorney/client communications?

Mr. **Santini**. In discussions with Roberto Martinez, sir, as you well know, I never supplied a progress report to Judge Hastings. However, I supplied that information that was within those progress reports to Roberto Martinez, advising him of these facts, and him advising me that we could listen to those calls.

Mr. **Anderson**. I don't want to make a big point. I just wanted to be sure that when you say you're authorized to intercept attorney/client things, it was Mr. Martinez who had authorized you. You are not aware of any court order which explicitly gave—where that authority came to you from the court. Am I correct?

Mr. **Santini**. I am basing my—this statement on what Roberto Martinez told me, yes, sir.

Mr. **Anderson**. That clarifies that.

Now, I also—you testified just briefly before, and I want to develop it, that there was a conversation between Mr. Rivero and Mr. Gordon shortly after your interception on September 9th.

Mr. **Santini**. Yes, sir. There was.

Mr. **Anderson**. And if I understood you, you said that Gordon reported that Mayor Clark had told him that Judge Hastings had told Mayor Clark that Mr. Gordon's Surfside and home phone wires were tapped. Is that correct?

Mr. **Santini**. I believe I said that the judge had told him.

Mr. **Anderson**. The judge?

Mr. **Santini**. Yes, sir.

Mr. **Anderson**. Now, I want to get this one very clear.

Mr. **Santini**. And at the end, after he had told him that, he also said, that he had finally named the judge.

Mr. **Anderson**. The point is, the information that Mr. Gordon imparted to Mr. Rivero was explicitly told him that the Surfside office and the home phone were wired, tapped?

Mr. **Santini**. That's what Mr. Gordon said Mr. Clark said.

Mr. **Anderson**. So as Mayor Clark has persistently denied that Judge Hastings ever told him about a wiretap. Did you at any point discover prior to his death how Mr. Gordon might have determined that information?

Mr. **Santini**. Yes, I did.

Mr. **Anderson**. How?

Mr. **Santini**. I specifically asked Mr. Gordon, "How did you assume from the statement"——

Mr. **Anderson**. Did he say assumed or did he say——

Mr. **Santini**. Excuse me. Can I put this in context, sir?

Mr. Gordon was having a conversation with Mr. Rivero. Throughout the entire time that Mr. Gordon was cooperating with us, he did not know that Johnny Rivero was cooperating. We did that for one specific reason. We didn't want to expose Johnny

Rivero so we could determine if in fact Waxy Gordon was telling us the truth.

That particular meeting was a one-on-one meeting. And we only——

Mr. ANDERSON. One-on-one with who?

Mr. SANTINI. Between Waxy Gordon and Johnny Rivero.

Mr. ANDERSON. Could you give the date? I really——

Mr. SANTINI. I believe it was on September 10, 1985. It was at a local restaurant.

When I was questioning Mr. Gordon later on, I had to be extremely careful of how I couched my questions to protect Mr. Rivero. I did, however, ask him, because in his—when he talked to us he said he thought there was a wiretap.

I asked him how he thought that. Did anybody tell him that? And he said, no, he presumed it from the information that he had received, and he had enhanced it, and that's how he gains access. He figured that's the way the FBI would have worked, and basically that he did not learn that from Mayor Clark or anybody else.

Mr. ANDERSON. But when Agent Rivero reported back to you, he said that Gordon had then told him that Mayor Clark had told him that, and he had identified both locations of the wiretap. Is that correct?

Mr. SANTINI. Yes, sir. He did.

Mr. ANDERSON. That was the information?

Mr. SANTINI. Both of the locations that he was specifically involved in.

Mr. ANDERSON. Now, when you had your conversation with Mr. Gordon, was that after you had arranged to have him make a drug buy and induced his plea agreement to gain cooperation?

Mr. SANTINI. Yes, sir.

Mr. ANDERSON. Now, when did that occur?

Mr. SANTINI. It began on November 18, 1985, and early on in the investigation with Mr. Gordon I had these discussions with him.

Mr. ANDERSON. Would it have been in November?

Mr. SANTINI. It would have been—yes, sir, November, 1985.

Mr. ANDERSON. So between, if I understand it, September 9th and November 18th, or whenever your operation with respect to Mr. Gordon personally culminated, Mr. Gordon was not being monitored or his contacts with Mayor Clark were not being monitored. Am I correct about that?

Mr. SANTINI. After his cooperation, sir?

Mr. ANDERSON. No. Before. Before his cooperation.

Mr. SANTINI. Excuse me. I'm sorry. Would you repeat that?

Mr. ANDERSON. Yes. Let me do that. I want to be clear on that. I am learning things every time I go through this again.

On September 9th, if I understand your account, Agent Rivero met with Kevin Gordon?

Mr. SANTINI. Confidential informant Rivero——

Mr. ANDERSON. Confidential informant Rivero met with Waxy Gordon.

Mr. SANTINI. On September 10, 1985, yes, sir.

Mr. ANDERSON. In the course of that conversation, Mr. Gordon reported that Mayor Clark had specifically told him that the Surfside office and home phones were wired?

Mr. SANTINI. Correct.

Mr. ANDERSON. Now, it was not until after November 18th that you, Agent Santini, were able to have conversations with Mr. Gordon. Is that correct?

Mr. SANTINI. Beginning November 18th.

Mr. ANDERSON. Beginning November 18th and thereafter?

Mr. SANTINI. Yes.

Mr. ANDERSON. So there's a five week gap in there when no one was having discussions with Mr. Gordon on this topic?

Mr. SANTINI. Yes. Well, that's not exactly true either. Mr. Rivero was having conversations with Waxy Gordon about this topic to try to seek out additional information. I believe undercover agent Giannotti also met with Kevin Gordon prior to the scenario on November 18, 1985, at which additional information was sought.

Mr. ANDERSON. And some of those conversations were recorded also, weren't they?

Mr. SANTINI. Some were and some were not, sir.

Mr. ANDERSON. Well, specifically there was a conversation between Mr. Rivero, Mr. Ferguson and Mr. Morrison recorded on October 11th. Do you recall that, Agent Santini?

Mr. SANTINI. Yes, sir. I do.

Mr. ANDERSON. And there again, on October 8th was a conversation between Mr. Rivero and Mr. Gordon?

Mr. SANTINI. Sir, I'd have to see it because there are numerous tapes if—I'm agreeing with you, yes, sir. If you say there was, I agree with you.

Mr. ANDERSON. I will at some point show you. You didn't prepare the list.

Mr. SANTINI. OK.

Mr. ANDERSON. But let me ask you another question on that. Did the FBI cause transcripts of these additional tape recordings to be made?

Mr. SANTINI. I would presume they did, sir. I was not in charge of preparing. I did, in fact, transcript some of these tapes myself. However, I don't know exactly what tape was transcribed or what tape was not transcribed. We had hundreds of tapes so——

Mr. ANDERSON. Well, at the——

Mr. SANTINI. Some of them should have been transcribed and I'm sure some of them were not.

Mr. ANDERSON. Let me now, if I may, break that. Let me shift a moment to transcription policy.

There were a series, as I understand it, conversations which were recorded by NAGRA body recorder during the period from July 15th until September 6th, and perhaps thereafter by Mr. Rivero. Is that correct?

Mr. SANTINI. Yes, sir. That's correct.

Mr. ANDERSON. And during that period of the authorized Title III intercept, there were a number of telephone conversations by Mr. Gordon, among others, which were intercepted.

Mr. SANTINI. Yes, sir.

Mr. ANDERSON. Now, were the tapes of those conversations transcribed to your knowledge?

Mr. SANTINI. To my knowledge, I recall seeing some of them, sir. As far as every, each and every transcript, I do not.

Mr. ANDERSON. Well, for example, were the conversations, the NAGRA body conversations that you relied upon in submitting your affidavit, for your quoting information, were those transcribed? Did you have a transcript as you made those affidavits with Mr. Martinez?

Mr. SANTINI. Sir, I think how we handled that was at that point in time, I was working on the affidavit of Roberto Martinez. The two other agents, Guy Nottoli and Frank Navas, were debriefing Mr. Rivero on a daily basis or any time that anything occurred. They would summarize for me, either on a 302, including portions, as I recall, I would have to see it as I said, certain aspects of those tapes, recorded, body recorded conversation of which I would rely on to place in the affidavit, yes, sir, that's true.

Mr. ANDERSON. And that, I take it, is standard FBI proceeding?

Mr. SANTINI. Based on the manpower we had and what we were doing, we couldn't transcribe every tape to the complete accuracy as it happened, no, sir, we couldn't.

Mr. ANDERSON. Having listened to some of them, I can empathize.

But if I understand what you are telling the committee, that where, for example, we find a quote in a footnote or in an affidavit that you had prepared, there was at least a transcription of that portion tendered to you before you signed your name so you were satisfied you were truly quoting Mr. Gordon, Mayor Clark, or whomever you purported to quote?

Mr. SANTINI. I would have to see it, of course. However, I can say that on occasions when I debriefed Mr. Rivero, basically because I had dealt with this individual for many years, other agents have, we relied on his statements on occasion. If in fact he said, "Kevin Gordon said this, exactly this," we would place that in quotations, yes, sir.

Many times I would also rely on a tape recording of which Frank Navas and Mr. Nottoli placed—from a tape recording, I would make that in quotation, yes, sir.

Mr. ANDERSON. And then there is the second period which we might date either September 6th or September 9th where an investigation was going into the source of the leak of information.

Mr. SANTINI. Correct.

Mr. ANDERSON. And in connection with tapes made after that date, in connection with that investigation, would those have all been transcribed or only selectively?

Mr. SANTINI. They certainly would have been listened to shortly after the tapes were retrieved. Also a debriefing would have taken place of either Mr. Kevin Gordon or Mr. Johnny Rivero, and I'm certain certain portions of those transcripts were transcribed. I would have to see each and every one, sir, to actually give you a definitive answer.

Mr. ANDERSON. And how would—I mean, I'm just asking this for information. I have a list of tapes that have been supplied to me.

How long would it take for you to determine whether there are transcripts that I don't have?

Mr. SANTINI. It depends on how many tapes you ask.

Mr. **Anderson**. I think there were 54 supplied, but not all of those relate to this matter. They relate to other matters also. Well, let me return to that. And I may ask you to look at that matter.

There did come a time when you—You were present when the plea agreement, when Kevin Gordon signed his plea agreement, weren't you?

Mr. **Santini**. Yes, sir. I was.

Mr. **Anderson**. Mr. Chairman, might I approach the witness?

The **Chairman**. Yes, you may.

Mr. **Anderson**. We do have copies for today. I will ask Mr. Hochberg to make them available.

I show you what's been marked Respondent's Exhibit 53 for identification and ask you if you can identify that document?

Mr. **Santini**. Yes, sir. This is the plea agreement that Mr. Gordon executed.

Mr. **Anderson**. And did he execute that in your presence?

Mr. **Santini**. Yes, sir.

Mr. **Anderson**. And it bears your signature as a witness on it?

Mr. **Santini**. Yer, sir. It does.

Mr. **Anderson**. And it's dated November 20, 1985?

Mr. **Santini**. Yes, sir. It is.

Mr. **Anderson**. I was confused a moment ago, because I thought you had testified that you began debriefing him affirmatively on November 18th?

Mr. **Santini**. That's correct.

Mr. **Anderson**. In substance had he orally agreed to this agreement so this was simply getting it down on paper? Or——

Mr. **Santini**. What basically happened, to be quite honest with you, sir, is Agent Mazzella and myself, after he debriefed him about the leak situation. He agreed that he wanted to cooperate. We explained to him what would happen, not draw a plea agreement or anything of that nature. The United States Attorney's Office would have to do that.

So on November 20, 1985, Roberto Martinez, myself, I can't—Agent Mazzella was there, and individuals from Public Integrity came down and they spoke to him about the same information we had spoken to him about, at which time they presented him with the plea agreement.

Mr. **Anderson**. Let me just be sure I understand and the committee understands the sequence.

Initially a mini-undercover operation, if I understand it, had been established to determine whether Mr. Gordon was capable of supplying drugs. Is that correct?

Mr. **Santini**. Yes, sir. That was long before this particular date, yes, sir.

Mr. **Anderson**. But he had in fact—you had established that he had committed a crime sufficient to warrant your getting his cooperation?

Mr. **Santini**. Yes, sir.

Mr. **Anderson**. Then you and Agent Mazzella met with Mr. Gordon, told him you couldn't negotiate a plea agreement, but reviewed with him the facts of life. Is that correct?

Mr. **Santini**. Well, basically we staged an arrest of Mr. Rivero and blamed the whole situation on what Waxy ultimately thought was Gino as being another informant. We took Mr. Rivero away in handcuffs, and we thereafter approached Mr. Gordon, advised him of his rights. He agreed to cooperate instantly.

From that point on, we gave him a short debriefing, advised him of what I just explained to you, and thereafter, the United States Attorney's Office on the charges of that nature became involved, as well as Public Integrity on the leak situation.

Mr. **Anderson**. Again, Agent Santini, and I will move along from here, but I'm just curious, if Mr. Gordon agreed to cooperate without the benefit of a plea agreement or anything like that instantly after having been advised of his rights, what was the function of offering him the additional incentive of a promise that he would not be prosecuted?

Mr. **Santini**. Well, sir, I cannot speak for the United States Attorneys Office, but when we become involved in a situation where an individual has—at that time, he had no pending charges, other than an oral authorization from Roberto Martinas, if in fact he didn't cooperate, we could have arrested him.

Because we cannot promise this individual anything or make any assumptions on the part of the United States Attorneys Office, we have to get involved in a plea agreement situation. We couldn't just direct him out on the street, with no assurances to him by the Government.

Mr. **Anderson**. In any event, it is in the course of those conversations, you informed Mr. Gordon that the specific cooperation that you sought was an alleged disclosure of Title III information by Judge Alcee Hastings, didn't you?

Mr. **Santini**. That, along with numerous other matters, criminal matters that we had uncovered, including corruption, shylocking, union corruption, numerous other things, he was told by me and Agent Mazzella that he would have to cooperate fully in all of those investigations.

Mr. **Anderson**. I understand, but that was certainly among them?

Mr. **Santini**. Yes, sir, the leak was definitely the first and major importance that we placed upon him.

Mr. **Anderson**. And did you indicate that he would have to cooperate in terms of providing you with additional information and cooperation on Mayor Clark's role in the dealings with Gino and Mayor Clark relating to Silvio Cardoso?

Mr. **Santini**. I believe at that point, sir, I told him he would have to become directly involved with Mayor Clark and make consensual recordings to document Mayor Clark's statement to him.

Mr. **Anderson**. That was a statement regarding——

Mr. **Santini**. The leak, yes, sir.

Mr. **Anderson** [continuing]. The leak.

Mr. **Santini**. As far as——

Mr. **Anderson**. Did you tell him you would have to push further for the Silvio Cardoso-Mayor Clark connection in Hialeah?

Mr. **Santini**. At that juncture, sir, I will tell you that I dealt with Mr. Gordon early on for a number of occasions, and then he was turned over to two other agents, the ones that I have already mentioned. During those early conversations, because we were trying to protect the identity of Johnny Rivero, we could not explore things that we had picked up on one-and-one conversations between himself and Johnny Rivero, so I don't believe that I specifically mentioned especially Silvio Cardoso at that point.

Mr. ANDERSON. In any event, it is the course of these discussions leading up to his agreement to be wired—I don't know what the term is, but wired for sound to meet with Mayor Clark—that you elicited from Mr. Gordon that his claims had been enhanced with respect to his role as a bag man and his role of having the Mayor in his pocket and his ability to use the Mayor in a drug deal, that those had been enhanced claims?

Mr. SANTINI. Yes, sir.

Mr. ANDERSON. He did not say they had been groundless claims, did he?

Mr. SANTINI. He said he had enhanced them. As far as the narcotics off-loading, that was total made up by him. He changed the $40,000 item to $4,000.

Mr. ANDERSON. Was it still in a paper bag?

Mr. SANTINI. Yes, sir. I can add all of those to it, if you can give me the transcripts, I would be glad to tell you exactly what he said.

Mr. ANDERSON. Well——

Mr. SANTINI. As to having him in his hip pocket, I've certainly asked him about that, enhancement was the answer he had. There is no way for me to know exactly what that meant.

Mr. ANDERSON. Unfortunately, there is no way for any of us at this point, perhaps.

I would ask, and I think they may have, that House Exhibits 168, 170, 179, and 180 be placed in front of Agent Santini.

Agent Santini, let me move through these rather quickly. I think you will find them all—they are all in evidence, and I think you know what they are, so we can simply take——

Mr. SANTINI. Yes, sir.

Mr. ANDERSON. Would you look at House Exhibit 168, at page 13, Note 3?

Mr. SANTINI. Yes, sir.

The CHAIRMAN. Counsel, could you refresh the committee's recollection, what is House Exhibit 168?

Mr. ANDERSON. Yes, Mr. Chairman. House Exhibit 168 is the second progress report, dated July 29, 1985.

Now, in that Footnote 3, you are summarizing from a recorded conversation, a conversation that Agent Rivero recorded, is that correct?

Mr. SANTINI. That Informant Rivero had, yes, sir.

Mr. ANDERSON. And this is the one in which Mr. Gordon indicated referring to some form of zoning for an organization named Diamonds, that "we cheated a little to get him there to begin with, he's a friend of the Mayor's"?

Mr. SANTINI. Yes, sir.

Mr. ANDERSON. And if I could ask you, Agent Santini, to move forward to House Exhibit 170, looking at pages 8 and 9, where Note 1 begins on page 8.

Mr. Chairman, House Exhibit 170 is the fourth progress report, dated August 12, 1985.

Now, this is the occasion on which the NAGRA body recorder failed?

Mr. SANTINI. Yes, sir, it did.

Mr. ANDERSON. And this is, however, based upon your specially intensive briefing of Agent Rivero?

Mr. SANTINI. Yes, sir.

Mr. ANDERSON. And this is the one in which Mr. Gordon reported that he had Mayor Clark in his pocket, correct?

Mr. SANTINI. Correct.

Mr. ANDERSON. Reported that he had delivererd him the enhanced amount of $40,000 in a brown paper bag, is that correct?

Mr. SANTINI. Correct.

Mr. ANDERSON. And that he had felt some grievance and recalled it, because the Mayor had only given him $100 for his work, is that——

Mr. SANTINI. Correct.

Mr. ANDERSON. Now, I take it, because the body recorder failed, you were particularly careful in debriefing Mr. Rivero on this conversation?

Mr. SANTINI. Yes, sir, I was.

Mr. ANDERSON. And that occurred almost immediately after he returned and you discovered there was no recording?

Mr. SANTINI. Yes, sir.

Mr. ANDERSON. Now, is there anything Mr. Rivero said to lead you to believe that these were enhanced claims, as opposed ot these were claims that——

Mr. SANTINI. From past experience with Mr. Rivero, he has been involved with people of this nature on many, many occasions. He has been responsible for the convictions of numerous people that voiced their opinions and made statements about things that are happening, trying to enhance their situations.

My answer to the question is Mr. Rivero felt that portions of that interview, I mean the statements that were made, was not quite as good as it sounded to us at the time. However, the portions about the $40,000, he believed that, yes, sir.

Mr. ANDERSON. Now, at the time you were using this information to submit it to a United States judge in order to persuade him that the Title III monitoring in your investigation continued, were you not?

Mr. SANTINI. Yes, sir.

Mr. ANDERSON. And anywhere, did you or Mr. Martinez share with the judge, or would you in ordinary circumstances share with the judge, the fact that some of the information you are providing under oath is information that the FBI itself does not credit?

Mr. SANTINI. I can't specifically remember saying that, sir. However——

Mr. ANDERSON. Is it reflected in the report or textually in the footnote itself, to which I have referred you?

Mr. SANTINI. No.

Mr. ANDERSON. And Mr. Rivero is dead and Mr. Gordon is dead?

Mr. SANTINI. Yes, sir, Mr. Rivero died in February of this year.

Mr. ANDERSON. Agent Santini, could I ask you to look at House Exhibit 179—were we just on 179?

Mr. SANTINI. I believe it was 178 a second ago.

Mr. ANDERSON. Let's look at 179, at pages 3 and 4, Note 1. Are you familiar with that?

Mr. **Santini**. Yes, sir, I am.

Mr. **Anderson**. Mr. Chairman, I am referring at this point to the first progress report, dated August 22, 1985. This I believe was filed under the extension.

Now, this is the one, on August 21st, am I correct, where Mayor Clark is not a participant, but there is a discussion with Gino and Gordon as to how the transaction in Hialeah will be arranged, is that correct?

Mr. **Santini**. Are we looking at Exhibit 179, page 4, sir?

Mr. **Anderson**. I'm sorry, I am sure we are.

The **Chairman**. Counsel, I think 179 is dated August 29.

Mr. **Anderson**. I apologize, Mr. Chairman. I had another illusion, but I had decided, in an effort to move myself along, that I would skip that one.

Stay there, please, and I am now with you, 179, pages 3 and 4, Note 1. Now, this is a meeting that Mr. Rivero had at which Mr. Gordon, Mr. Ferguson and Mayor Clark were present at the Miami Outboard Club, is that correct?

Mr. **Santini**. That is correct.

Mr. **Anderson**. And that meeting was recorded, is that correct?

Mr. **Santini**. A portion of that meeting was recorded.

Mr. **Anderson**. OK. And this is the one which I would truly be interested in knowing, do you know if transcripts were prepared of this meeting?

Mr. **Santini**. I cannot remember, sir. If you could show me some, I could enhance on that.

Mr. **Anderson**. I was hoping you were going to show me some.

Well, let me take through and just verify that, based upon your listening to the tape and your conversations with Mr. Rivero, that this is an accurate recount. It is my understanding that at that meeting Mr. Gordon, Mr. Rivero, Mayor Clark and Mr. Ferguson were all together, is that correct?

Mr. **Santini**. Yes, sir.

Mr. **Anderson**. And that is the meeting where Mr. Gordon introduced Mr. Rivero to Steve Clark?

Mr. **Santini**. Correct.

Mr. **Anderson**. And during that meeting, they were discussing the question of how to arrange zoning for Gino in Hialeah, is that correct?

Mr. **Santini**. If you will permit me to read this, one second, sir.

Mr. **Anderson**. Please do. This is a fairly important one.

Let me direct you to page 4, where the footnote text continues, the third full paragraph.

Mr. **Santini**. Yes, sir, that is correct.

Mr. **Anderson**. And your affidavit, based upon your conversation with Mr. Rivero and your examination of transcripts, reported that after the game of pool, Rivero, Ferguson, Gordon and Clark went back to the bar area. Rivero then went to the rest room and, upon his return, sat down next to Gordon, Gordon leaned over to Rivero and said, "Steve is going to take care of this Hialeah thing for us, since that's where Gino wants to be," and then Clark—I take it that refers to Mayor Clark—said, "If you have any problems with that thing in Hialeah, get in touch with me." Gordon asked, "What's the guy's name, again?" Clark answered, "Silvio Cardoso.

If you have any problems with him, get back in touch with me." Clark added Clark was his contact in Hialeah.

You verified all of that off that tape recording, is that true?

Mr. SANTINI. Sir, I believe what happened, the recording—now, I have to review the tape again, but it is my best recollection that when they began playing pool, because this recording device is very bulky and it was located in a position that might be exposed, Mr. Rivero went to the bath room, removed that recorder, because I think—I am not sure how long the recording had taken place, there was a time limit on those recordings—that he removed the recording prior to playing pool.

What I have in quotes there—and I have to see the 302, as I say, sir—but it was my—and probably the agents were with me—when I debriefed Mr. Rivero on this issue, we took a considerable amount of time to make sure that he had what he was telling us correct, and that's why I put it in quotes.

Mr. ANDERSON. So, in any event, as we stand here in 1989, those quotes are accurate, they are the best available evidence we are likely to get, with one possible exception, of what went on in that room at that date?

Mr. SANTINI. Correct.

Mr. ANDERSON. And you are as confident as you are in your other submissions that those quotes are accurate?

Mr. SANTINI. Correct.

Mr. ANDERSON. Now, moving forward again, after Mr. Gordon had begun to cooperate, there did come a time when you recorded a meeting—were you present when——

Mr. SANTINI. Let me explain my role, sir. The initial meetings with Mr. Gordon early on, however, later on in that investigation, I focused—Mr. Gordon was basically turned over to two other agents, Guy Nottoli and Frank Navas. They became his controlling agents. They are the ones that wired him up, they are the ones that covered him. I knew I would be advised as to what was taking place, I would review 302's and recordings of that. However, to actually tell you that I directed him on one particular occasion or another, I cannot do that.

Mr. ANDERSON. Well, just so we structurally—and I am getting close to the end—structurally get to where we want to be, I had understood on the Hialeah zoning and other investigations, up until September 6th, you were the case agent and Agent Mazzella was the supervising agent.

Mr. SANTINI. On all of the investigations, Hialeah, ILA, I was a major player in the narcotics investigation.

Mr. ANDERSON. Now, on the investigation into the disclosure of confidential information, were you also the case agent on that?

Mr. SANTINI. I had intricate details of it. Agent Mazzella was basically in charge of that portion of the investigation.

Mr. ANDERSON. So, he was, in effect, both the case-agent and the supervisory agent, and you were working very closely with him.

Mr. SANTINI. Correct.

Mr. ANDERSON. I just want to understand that.

Mr. SANTINI. That's correct, sir. I might add that the street activity involving Mr. Gordon's attempts to document further evidence regarding Mr. Clark's statements was being done by Agent Navas and Agent Nottoli. However, again, I will say that I was continually advised of what was going on.

Mr. **Anderson**. Now, a couple of additional questions about FBI practice that I am a little confused about. You referred, for example, when you would debrief Johnny Rivero, you would do an FBI 302, is that correct?

And it is my understanding that that is the standard form which the FBI uses when it does an interview or is even reporting any kind of event, is that correct?

Mr. **Santini**. Yes, sir.

Mr. **Anderson**. And regular practice, when matters are not emergent or something, one should expect one interview, one FBI 302, is that correct?

Mr. **Santini**. Not particularly, sir. If we are debriefing an individual over a number of days, we could incorporate all of that debriefing into one 302.

Mr. **Anderson**. Is that normal practice?

Mr. **Santini**. It is standard practice involving a situation like this, where you have an individual like Mr. Gordon that we are trying very carefully to get certain information out of him; secondly, we are trying to protect the confidential informant and the existence of the wiretap, that you do it over a certain period of time and report those findings over that period of time, at the end of it.

Mr. **Anderson**. Would it have been standard practice, when you were dealing with Mayor Clark, to collapse interviews occurring over a seven-day period into a single 302?

Mr. **Santini**. Yes, sir, it could have been.

Mr. **Anderson**. Could have been.

Mr. **Santini**. Yes, sir.

Mr. **Anderson**. I have no further questions of this witness, Mr. Chairman.

The **Chairman**. Is there redirect examination?

Mr. **Synar**. No redirect, Mr. Chairman.

Mr. **Anderson**. Two more things, Mr. Chairman, if I might. Could I move the exhibit, the plea bargain into evidence, and might I display—I don't wish to——

The **Chairman**. Let me first deal with that. What is the number of that plea bargain?

Mr. **Anderson**. Respondent's No. 53, Mr. Chairman.

The **Chairman**. Is there objection to that?

Mr. **Gekas**. No objection, Mr. Chairman.

The **Chairman**. It will be admitted.

[The document referred to was marked Respondent's Exhibit No. 53 and was received in evidence.]

Mr. **Anderson**. I don't think I need to put it into evidence, but I wonder if I might supply in open court on the agent with a list of the tape recordings that have been supplied to me and perhaps, if he could, tell me which ones for which there are transcripts available. It might aid me in presenting things to the committee, without a great deal of time consumption.

The **Chairman**. You need to do that in open court, to go through that list of——

Mr. **Anderson**. I want the committee to note that I made the request of the FBI here, that——

The CHAIRMAN. We will be glad to——

Mr. ANDERSON [continuing]. To the extent there are transcripts, I would like to get them.

The CHAIRMAN [continuing]. To direct him to give you that information by early next week, if he could have a chance to review that.

Mr. ANDERSON. Thank you, Mr. Chairman.

The CHAIRMAN. I have no questions of this witness.

Senator Rudman?

EXAMINATION BY THE COMMITTEE

Senator RUDMAN. Agent Santini, I am just confused about a couple of things here, and maybe I am the only one confused. I am not even sure it is relevant, but it may be so I want to ask you something.

Mr. Martinez was the Assistant United States Attorney responsible for going to Judge Hastings' court and getting the orders, is that correct?

Mr. SANTINI. In conjunction with me as far as the affidavit goes, sir. The application itself, I must swear to Judge Hastings that that is my words on that paper.

Senator RUDMAN. That is my next question. But you were supplying the substantive data to the attorney who was inquiring and applying?

Mr. SANTINI. Correct, sir.

Senator RUDMAN. And therefore, you would have to have a broad knowledge of what the investigation was, because you had to tell the United States Attorney what it is that you wanted to wiretap?

Mr. SANTINI. Yes, sir, that's correct.

Senator RUDMAN. And this original electronic surveillance order that was entered into, was that a very broad order, covering a great many telephones, or was it fairly narrow?

Mr. SANTINI. I believe, sir, there were actually, at the first request, the first affidavit I submitted requested, I am almost positive it was eight, and almost immediately—if you could show me the first affidavit, I could tell you exactly, sir.

Senator RUDMAN. Well, there are actually four, plus a 5th called "others unknown"?

Mr. SANTINI. Well, I know for certain that we had it on the informant's phone, Johnny Rivero, because one of the individuals used that phone explicitly. We had it on an organized crime figure's phone——

Senator RUDMAN. Right.

Mr. SANTINI [continuing]. We had it on another phone of another individual, and we had it on Mr. Gordon's phone——

Senator RUDMAN. Right.

Mr. SANTINI [continuing]. And we had it on one other individual's phone.

Senator RUDMAN. That's right.

Mr. SANTINI. That's really not——

Senator RUDMAN. That's not relevant, and that's the kind of thing the House wants to protect. I understand that.

Mr. **Santini**. However, the City of Surfside I believe had five lines——

Senator **Rudman**. That is correct.

Mr. **Santini** [continuing]. And so that first affidavit included those five lines, plus the phones we just described.

Senator **Rudman**. That's correct. Did you have one on Mr. Gordon's lawyer's phone?

Mr. **Santini**. No, sir.

Senator **Rudman**. Well, I've got a question for you and I hope you can answer it. September 9, 1985, 9:23 a.m., conversation between Gordon and Bonehill: Gordon says at one point—you have that transcript there, don't you?

Mr. **Santini**. Yes, sir, I believe I do.

Senator **Rudman**. Midway down the page, Exhibit 186B, he says—well, first his lawyer says, "Well, no, you are going, going to meet Clark" or something. "Answer: Oh, yeah, uh-huh. I can't go into that on this phone." That phone is wiretapped.

Mr. **Santini**. Yes, sir.

Senator **Rudman**. Turn the page, the middle of the line again, middle of the page, "Well, OK. I'll probably call you in half-an-hour. OK. Yeah. If you can get out to a, yeah, telephone"—how did you take that? What did that mean?

Mr. **Santini**. I can tell you exactly what happened there, sir, because I asked Mr.——

Senator **Rudman**. Well, it would have appeared to be—let me finish my questioning and then maybe you can answer them all at once.

Mr. **Santini**. OK.

Senator **Rudman**. The average reader reading surveillance reports, he was going to get out to a public telephone, that's what that meant, or another telephone——

Mr. **Santini**. Yes, sir.

Senator **Rudman** [continuing]. Not his telephone.

Mr. **Santini**. That's exactly correct.

Senator **Rudman**. And then, on the next page, on the next exhibit, 187B, you've got September 9, 1985, 11:04 a.m., which was roughly an hour-and-a-half, an hour and forty minutes later, the conversation is intercepted in a call placed from Gordon to Bonehill.

Now, my question is how is that interception accomplished, because Bonehill obviously didn't have a tap on his phone?

Mr. **Santini**. No, sir.

Senator **Rudman**. And where was that call made from? That's my question.

Mr. **Santini**. That call was made from the City of Surfside. We learned much later—and I can't tell you the exact date of this, sir, it certainly was after the recordings were made. The recordings were in progress between Mayor Clark, Kevin Gordon and others, but we questioned Gordon about that, and what he thought, was his perception of an FBI wiretape was that telephone that he utilized in his office was tapped. But if he walked over to another individual's phone, in another office, is what he did do. He thought that phone was safe.

Senator **Rudman**. You had pen registers that later proved that that is what happened?

Mr. SANTINI. Actually, it was on the same line, but it was just an extension out of his office, in another office, is what he told us.

Senator RUDMAN. He really didn't luck out too well, did he?

Mr. SANTINI. It does not appear so.

Senator RUDMAN. Of all the phones in the area, he had to go to one that was also under surveillance.

Mr. SANTINI. It appears that way.

Senator RUDMAN. You can understand my question?

Mr. SANTINI. Yes, sir. I'm glad you brought it up.

Senator RUDMAN. Because I notice in Judge Hastings' order, there is some boilerplate here which is about a page-and-a-half long, which refers to the absolute rule of never knowingly listen to or recording a conversation between a subject and his attorney. We all know that, but I have never heard of the Bureau putting a tap on a lawyer's phone except in extraordinary circumstances, and the record would appear that you had done that and so I——

Mr. SANTINI. I can assure you that Mr. Bonehill, nor any other attorney in this operation, was a wiretap placed on his phones. As I say, Mr. Gordon thought in his own mind, as long as he got out of his office, that he was safe.

Senator RUDMAN. I understand. Mr. Gordon and your informant, they are both deceased?

Mr. SANTINI. Yes, sir, they are.

Senator RUDMAN. They both died of natural causes?

Mr. SANTINI. Yes, sir.

Senator RUDMAN. The attorney Bonehill was referred to as "was an attorney."

Mr. SANTINI. Sir, I don't know his current position.

Senator RUDMAN. You do not.

Mr. SANTINI. I would presume he is, but I don't know.

Senator RUDMAN. All right. Thank you.

Mr. SANTINI. Thank you, sir.

The CHAIRMAN. Are there any other questions from the committee?

[No response.]

The CHAIRMAN. Let me just ask one, Mr. Santini. You recorded some of the more significant phone calls here in early and mid-September, and then you made an agreement with Mr. Gordon on the 18th of November, during the five-week intervening period, he was sold or purchased drugs?

Mr. SANTINI. What he actually did, sir, was he was as go-between between a narcotics dealer in South Florida and himself. He set up the deals, he received monetary gain out of the deals, and he was there——

The CHAIRMAN. He did something which persuaded him he had to cooperate with you?

Mr. SANTINI. That is correct, sir.

The CHAIRMAN. What cooperation did you require of him after the 18th, in addition to testimony? You indicated you had wanted him to wear equipment and record conversations between himself and the Mayor?

Mr. SANTINI. And others. There was a wide variety of criminal activity that Mr. Gordon could have helped us with. We also told him that he would have to become directly involved in those activities, to document past criminal activities that he was directly involved in. Of course, I will say that the wiretap issue was his first directive, that is what we told him he had to do——

The CHAIRMAN. Did he record conversations after that date which you are depending upon here to make the wiretap charge against Judge Hastings?

Mr. SANTINI. He recorded conversations—I believe, sir, after the plea agreement was signed, he began working for us. You must understand that this man was extremely nervous, he had a heart condition, we had to be extremely careful how hard we pushed him to make these recordings. We wanted to set up a scenario, knowing where the individuals such as Mayor Clark, Peter Ferguson, and others involved would be in a location that we could gain the best quality recording.

Shortly after he made the recording with Mayor Clark, I believe he died in February, 1986, and we lost the access to all the other criminal activities that we were going to pursue, but if he would have lived, we would have pursued those matters.

The CHAIRMAN. Let me ask another question here, just to clarify things. In September 1985, did you know about a conversation between Glenn Whittle and Agent Dowd on August 23rd—July 23rd, excuse me, when Whittle asked Dowd whether Clark and Ferguson were under investigation? Did you know about that?

Mr. SANTINI. Yes, sir, I did.

The CHAIRMAN. OK.

Are there other questions? Senator Lieberman?

Senator LIEBERMAN. Thank you, Mr. Chairman.

Mr. Santini, just a few questions, briefly. Just for the record, did you ever disclose any information relating to this investigation to anyone outside of the FBI or Judge Hastings, as part of the papers that were presented to him?

Mr. SANTINI. Other than the people in the United States Attorneys Office, absolutely not, sir.

Senator LIEBERMAN. Secondly, we have heard some testimony here, suggestions that Mayor Clark was friendly with many FBI agents, personally friendly.

Mr. SANTINI. Yes, sir.

Senator LIEBERMAN. Is that your understanding?

Mr. SANTINI. I was aware that he was friends with certain agents in the FBI. Senator, I might add that I have been investigating these types of sensitive cases almost from six months after I became an agent. One thing that I have specifically learned is you do not talk about these investigations other than to those agents and United States Attorneys personnel that need to know.

Senator LIEBERMAN. Right.

Mr. SANTINI. I certainly never spoke to any agent outside of that realm. I have no knowledge of any of the agents that were working with me telling any agent that might have been friendly with Mayor Clark or were not friendly with Mayor Clark or anybody else outside this investigation.

Senator LIEBERMAN. I take it that you were not personally friendly with Mayor Clark?

Mr. SANTINI. No, sir, I never met Mayor Clark until the morning that I interviewed him.

Senator **Lieberman**. And to the best of your knowledge, were any of the FBI agents working with you on this case among those who were friendly with Mayor Clark?

Mr. **Santini**. Absolutely not.

Senator **Lieberman**. OK. Thank you, Mr. Chairman.

The **Chairman**. Is there any reason this witness cannot be excused?

[No response.]

The **Chairman**. If not, you are excused, Mr. Santini. We thank you very much for your testimony.

Would the House call its next witness?

Mr. **Bryant**. The House calls Stephen Clark.

The **Chairman**. Mr. Clark, would you please raise your right hand?

Do you, Stephen Clark, swear and affirm that the evidence you shall give in the case now pending between the United States and Judge Alcee L. Hastings shall be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. **Clark**. I do, sir.

The **Chairman**. Would you please be seated?

TESTIMONY OF STEPHEN P. CLARK

Mr. **Baron**. Thank you, Mr. Chairman.

Good afternoon, Mayor Clark.

Mr. **Clark**. Yes, sir.

DIRECT EXAMINATION

Mr. **Baron**. Would you state your name for the record, please?

Mr. **Clark**. Stephen P. Clark.

Mr. **Baron**. And what is your title?

Mr. **Clark**. I serve as Mayor of Metropolitan Dade County, Florida.

Mr. **Baron**. And how long have you served in that position?

Mr. **Clark**. From 1970 to 1972 and from 1974 to the present date.

Mr. **Baron**. OK. Now, directing your attention to September 6, 1985, did you have occasion to attend a meeting of an organization known as Metro Miami Action Plan?

Mr. **Clark**. Yes, sir, I did.

Mr. **Baron**. And is that known by the acronym MMAP?

Mr. **Clark**. Yes, sir.

Mr. **Baron**. All right. What is MMAP?

Mr. **Clark**. MMAP is an organization that was formed right after we had some civil disturbance in Dade County, Greater Miami, concerning itself with trying to create parity between the black personnel that live in our community and everyone else. It concerned itself with education, employment, it concerned itself with criminal justice and also housing.

Mr. **Baron**. Did you play a role in the creation of MMAP?

Mr. **Clark**. Yes, sir, I was one of the founders of the organization that was funded by Metropolitan Dade County.

Mr. **Baron**. Now, again, directing your attention to September 6, 1985, were you at that MMAP meeting for any specific purpose?

Mr. Clark. Yes, sir, I was to receive an award by the MMAP organization itself. I received a small clock, a battery-operated clock at that meeting.

Mr. Baron. Mr. Chairman, may I approach the witness, please?

The Chairman. Yes, you may.

Mr. Baron. Mayor Clark, I have just handed to you what has been pre-marked as House Exhibit 189. Would you take a look at that, please?

Mr. Clark. Yes, sir.

Mr. Baron. And can you identify it?

Mr. Clark. Yes, sir, that's the presentation program of the Metro Miami Action Plan, the annual conference.

Mr. Baron. And what is the date on it?

Mr. Clark. September 6, 1985.

Mr. Baron. OK.

Mr. Chairman, I would like to move the admission of House Exhibit 189 into evidence.

The Chairman. Is there objection?

Mr. Anderson. None.

The Chairman. It will be admitted.

[The document referred to was marked House Exhibit No. 189 and was received in evidence.]

Mr. Baron. Mayor Clark, do you know Judge Alcee Hastings?

Mr. Clark. Yes, sir, I do.

Mr. Baron. And how well do you know him?

Mr. Clark. Well, I've known him off and on since 1970. I met him during a campaign he was running, I believe for the United States Senate, and I was running for the Office of Mayor of Metropolitan Dade County.

Mr. Baron. Do you know him socially?

Mr. Clark. No, sir.

Mr. Baron. How about over the years since that campaign you just mentioned——

Mr. Clark [continuing]. Occasionally——

Mr. Baron [continuing]. The nature of your contact?

Mr. Clark. At different conference or different meetings somewhere, I would have the occasion to meet Judge Hastings.

Mr. Baron. Did you see him, have occasion to see him on the morning of the MMAP meeting of September 6, 1985, that we've disussed?

Mr. Clark. Yes, sir, he was the guest speaker that morning, and after the awards were made he made his speech.

Mr. Baron. Now, did you have any conversation with Judge Hastings that morning?

Mr. Clark. As soon as he left the podium after his speech, he came down across right in front of the stage, was about maybe 20 inches high, maybe two steps off the floor, and he came toward me, and I was standing in the audience and the audience was kind of breaking up at that time, and he stuck out his hand, I said, "Hello, Judge," and he was moving forward toward the back of the room, where the exit was or the entrance and exit, and he said in a low tone to me, "Stay away from Kevin Gordon, he's hot, he's been using your name in the Hialeah area." I was astounded——

Mr. Baron. Did you say anything back to him at that point?

Mr. **Clark**. No, sir, I didn't. I didn't respond at all.

Mr. **Baron**. Now, who is Kevin Gordon, as far as you know him?

Mr. **Clark**. Kevin Gordon, when I served as Mayor of the City of Miami and also Commissioner for seven years, was the code enforcement officer and retired from the City of Miami.

Mr. **Baron**. Code enforcement?

Mr. **Clark**. Code enforcement, concerning lighting, street striping, setbacks and things of that nature.

Mr. **Baron**. And what was your connection with him?

Mr. **Clark**. I am a general contractor, by profession, and I on occasion would process plans through a department that he was in charge of.

Mr. **Baron**. As a result of the encounter that you have described that you had with Judge Hastings that morning, what, if anything, did you do?

Mr. **Clark**. I placed a call to Mr. Peter Ferguson, who had been a campaign aide of mine, and I said, "Pete, do you know how to get in touch with Kevin Gordon?" He said, "I don't know." I said, "If you can contact Kevin Gordon, tell him I'd like to meet him over at the Miami Outboard Club at 11:30."

Mr. **Baron**. OK. Incidentally, did Kevin Gordon have a nickname?

Mr. **Clark**. I think his name was Waxy, his nickname was Waxy.

Mr. **Baron**. Did you meet with Waxy Gordon later that morning?

Mr. **Clark**. Yes, sir, I did, at 11:30, I was there and he was there at the bar at the time——

Mr. **Baron**. OK.

Mr. **Clark** [continuing]. In the lounge.

Mr. **Baron**. In the Miami Outboard Club?

Mr. **Clark**. Yes, sir.

Mr. **Baron**. And what happened at that meeting?

Mr. **Clark**. I went up to Mr. Gordon and I said, "What are you trying to do?" He was sitting down at the end of the bar—it was a long bar, probably as long as this counter, as long as this dais—and I said, "What are you trying to do to me?" He said, "What do you mean?" I said, "I understand that you're using my name for influence out in the Hialeah area, and if you are you'd better stop. I've got a good name in this town, I've been in public office here for almost 25 years, and I'm not about to have you smear it all over town. So, if you're doing it, stop." He said, "What do you mean? I didn't do a thing like that." And I said, "I've got it from a very authoritative source that you're using my name in the Hialeah area." And he kept pumping me, he wanted to find out how I had this information. I said, "I received it from a Federal judge." He kept pumping me and I finally said it was Judge Alcee Hastings.

Mr. **Baron**. What was his response?

Mr. **Clark**. He turned as white as that paper and was very shaken, and that was the end of the conversation.

Mr. **Baron**. Now, that conversation took place the same morning that you described that you had the encounter with Judge Hastings?

Mr. **Clark**. September 6th, at 11:30 in the morning.

Mr. **Baron**. All right. Now, do you recall another encounter with Mr. Waxy Gordon in January 1986?

Mr. **Clark**. Yes, I was there having lunch, it's a lunch operation also——

Mr. **Baron**. There is where?

Mr. **Clark**. At the Miami Outboard Club, I'm sorry.

Mr. **Baron**. OK.

Mr. **Clark**. And he came in and sat down beside me, and there was some conversation that went on, and he said—and it gets down to the position about the information I had given him that I had received back in September. I had no contact in between time, other than occasional say hello or goodby, and he said, "Was it really Alcee Hastings?" I said yes, it was Alcee Hastings.

Mr. **Baron**. Before you get into that conversation, let me ask you this: Did you discover at some later time that Mr. Gordon was wearing a wire during that conversation?

Mr. **Clark**. I found that out in the month of February, after Mr. Gordon had passed away, February or March, and a tape was played back of that conversation. I didn't know he was wired.

Mr. **Baron**. You didn't know he was wired at the time?

Mr. **Clark**. No, sir.

Mr. **Baron**. Mr. Chairman, at this time I would like to offer House Exhibits 194A and 194B. The 194A has previously been identified by the House as a tape recording of the January 17, 1986 encounter between Mayor Clark and Mr. Gordon, and 194B I believe has been established to be the transcript of that recording.

The **Chairman**. Is there objection?

Mr. **Anderson**. As long as it is played, no.

Mr. **Baron**. That was my next step.

The **Chairman**. All right, the exhibts will be admitted and played.

[The documents referred to were marked as House Exhibit Nos. 194A and 194B and were received in evidence.]

[A tape recording was played at this point.]

January 17, 1986 conversation between Kevin "Waxy" Gordon, Steve Clark, and Pete Ferguson.

KG - Kevin Gordon
SC - Steve Clark
PF - Pete Ferguson
UI - Unintelligible
MAC - Mc Chesney

KG: I haven't been down here, the last time I was down here, of course, I was lucky enough to run into PETE. You know, did PETE tell you our conversation in the bathroom?

SC: About

KG: About that JOHNNY RIVERO. You know, you know I, ah, it's about three weeks ago, fours weeks ago, and I was, JOHNNY had come down here and I think caused a problem.

SC: Oh, yeah this JOHNNY that sat over here, the pool shooter.

KG: Yeah! The pool shooter, yeah you know

SC: Yeah, who in the fuck is he?

KG: Well I wasn't sure you know, I, uh,

SC: Look you open your mouth look what happened

KG: Oh, MC CHESNEY, I thought it was RIVERO. Well anyway when this thing happened with HASTINGS and everything, I got up in arms naturally.

SC: Naturally

KG: So and he told me, come to me if you got anything going

SC: Hey WAXY's, WAXY's here

KG: Hey, my man how are you?

MAC: Nice to see you, Happy New Year.

KG: Happy New Year to you MAC, Jesus.

MAC: How are you?

KG: Good who are you doing?

EXHIBIT
1946
HOUSE

MAC: I'm alright.

SC: Say MAC how are you buddy?

MAC: Real fine very fine

SC: Very good

KG: So the bottom line is ah, I ran into STU MORRISON and PETE there I, you know and said what the hell went on with JOHN because he got all upset and he left. And then he called me back I said and I didn't respond and he kept saying go, and do this in Hialeah. And I said wait a minute what are you talking about? I said, I'm a site selector, I'm getting a $25,000 commission for finding you a site. And you're suppose to deal with the guy out of Dallas, Houston, not Dallas. Said o'kay, alright, alright. You know I talked with PETE and PETE was a little upset with the guy because apparently when I'm not here, he was talking to people and saying (UI).

SC: I don't know, who the, what happened to him, where did he go?

KG: Ah, he went back to Mississippi, Chicago, Alabama or wherever he's from, you know.

SC: I didn't see -

KG: I believe he went back to Houston, but I'm not sure.

SC: But how, how would HASTINGS ever learn this shit?

KG: I have no idea, you know, but I don't think HASTINGS knew any thing about, you know, he bumped into you, he bumped into you and said something about me. So that makes me feel sorta -

SC: Here, here's what happened. We're down at the HYATT REGENCY and he is the guest speaker. He rips the hair on all the fucking judges ass, but then he's my friend though.

KG: Yeah, yeah, you told me.

SC: And everybody's saying "hello judge" and he comes and says STEVIE I want to tell you something....don't get near KEVIN oh shit, you know christ almighty, your last name.

KG: GORDON

SC: I don't know how the fuck that (UI) but KEVIN GORDON is involved in some zoning in Hialeah and don't, I'm just telling you now, don't no more, I'm just walkin' away from you. But don't get near it, because he's got problems and that's, I came back and told you immediately.

KG: That's right and that was the end of that. But then, I well, got, uh

SC: How in the hell would he know that?

KG: I have no idea

SC: Did you deal with any spooks on that thing?

KG: Never, I never dealt, you know, what I did, here's what I did. I made one call....

SC: To a commissioner?

KG: To a commissioner out there. To what? Give me a half dozen of those things will ya (laugh) no.

SC: They're great though. They're great. MAC loves them, they're great, that potassium is what you need buddy.

KG: Yeah

SC: When you got blood pressure problems. Cause you, you take a diaretic? For your problem?

KG: Yeah. Yeah. I take a diaretic.

SC: That's what you need right there. Do you take potassium?

KG: No, he doesn't prescribe anything for me.

SC: Well, if you take this you'll feel, look how much better he looks.

MAC: Sure, one bite.

KG: Course, my, my doctor just had a stroke so I better not follow him anymore (laugh)

PETE Ola, Ola

KG: I, I walked away from the guy.

SC: How, how in the fuck would, would the judge know about this. See and I was, I was . . .

KG: It's, it's got to be something plant you know!

SC: JOHNNY might have been the plant.

KG: Well, that's what it comes out to be.

SC: And I don't realize it because this is on Federal Bureau good, good -

PF: I know.

SC: That's o'kay, that's nothing wrong with the guy. He says, no t lk, no more just walk away and walk I walked away. But he's my friend, he's a fuckin Federal judge, man.

KG: Right now my friend, he doesn't come up for any election anymore.

SC: Ah, no he's a good guy.

KG: Ah, but if he were I would be out ah, with the marchers.

SC: Yeah that's right.

KG: He did me a hell of a good -, so I'd lose money on the deal but I don't know where I'm going with the deal anyway. You know when I called you one time and said I think it's clean and you said there's nothing wrong with cleanliness, right?

SC: That's right.

KG: But, then I'm saying well - .

UM: Order, order (UI) man.

KG: Another one? Another one?

UM: You get sour cream in that stuff or what?

UM: Sour cream, yeah.

UM: Jesus Christ.

UM: Alright. Got away with it.

KG: Anyway, I walk away from the whole thing and they try to put, put one of these Phonton things up in North Miami Beach, that's the deal I was working on.

SC: Yeah.

KG: Photon.

KG: And they had to have a resoning hearing you know. And so I don't know what happened up there.

SC: You went home, went to sleep, got away from it.

KG: I left $25,000 in somebody's car. That's all I know (laugh).

SC: I don't give a shit buddy. I'm telling you what I heard and I didn't know anything about nothing.

KG: I appreciate (laughing) you know and that's the end of the conversation.

SC: When you run into, when you run into. . . .

KG: End of the conversation.

SC: In a bear's ass you get rid rid of it, right! Keep walking. Old boy says, tell you a story, walk it.

Mr. **Baron**. Mr. Mayor, I believe you testified earlier, you did not know you were being taped at that time?

Mr. **Clark**. No, sir, I did not.

Mr. **Baron**. Incidentally, is Waxy Gordon still alive?

Mr. **Clark**. No, sir, he died shortly after that meeting.

Mr. **Baron**. OK. Were you subsequently approached by the FBI?

Mr. **Clark**. Yes, sir, in February of that year, the FBI came to my house at quarter to 7:00 in the morning, they identified themselves as FBI officials, officers, and they wanted to come in. I said come in and sit down. They said, "You're not the target of this investigation, but we want to ask you some questions to get this cleared up." And they kept asking me questions, did I know Kevin Gordon, I went through the whole scenario, and finally got down to the—first of all, they said, "Now, if you lie to a Federal officer, that's perjury." I said, "I'm not going to lie to anybody. I'm telling the truth of exactly what happened."

So, as the conversation progressed, they got down and they said, "Did a Federal judge tell you this?" And I said yes. And they said, "Who was the Federal judge?" And I hesitated a little bit, I didn't want to get anybody in a jackpot, so finally I said, "It was Judge Alcee Hastings." And they said, "Are you willing to cooperate?" I said, "Fully, I'm here cooperating today and I'll continue to cooperate."

They said, "We'll be back to see you in a couple of days." But one of the things they told me when they first came in, they says, "Don't get near Judge Hastings, don't try to call him on the phone, don't try to get an emissary to go to him," and I didn't. Then they came back a couple of days later and they wanted me to put a body wire on myself, and I said, "Look, I have high blood pressure myself and let me think this over." I thought it over and talked to my doctor and he said, "Man, you're close to a stroke now, so don't get involved in that." I said all right, fine.

Mr. **Baron**. You already knew what had happened to Waxy?

Mr. **Clark**. No, sir, I didn't know that he died of a stroke. So, as it turned out, I said, "Wait a minute, now. First of all, you told me not to get near the judge, not to talk to the judge, not to have an emissary go to the judge, and I didn't, and now you're changing your mind, put a body wire on." They said, "Well, you can put it in your boots." I said, "I don't wear boots." They said, "Well, we'll buy you a pair of boots." I said no. Then they came back and they said, "Well, will you contact him by phone and see if he will repeat the same message to you?" I said, "No, I'm not going to do that." Then they wanted me to go to a restaurant where he has lunch. I said, "No, I'm not going to do that," and that was the end of the conversation. They said, "Well, you'll be subpoenaed before the grand jury." I said, "Fine, send me a subpoena."

Mr. **Baron**. Were you ultimately subpoenaed to the grand jury?

Mr. **Clark**. I was subpoenaed. The subpoena read "Stephen P. Clark, wherever found," like I was a fugitive going to run away from somebody, but I was there at the grand jury and I went down and testified exactly what I'm telling you.

Mr. **Baron**. All right. Now, subsequent to your appearance before the grand jury, do you recall an article appearing in the Miami Herald concerning your appearance before the grand jury?

Mr. CLARK. I remember, I don't know the exact date, but it was shortly after that, and I was sworn by the grand jury. A Mr. Eric Holder, who was the prosecutor from the Department of Justice, said, "Don't you say anything to anybody," and I didn't and it turns up in the newspaper.

Mr. BARON. Mr. Chairman, may I approach the witness?

The CHAIRMAN. Yes, you may.

Mr. BARON. Mr. Mayor, I am showing you House Exhibit 188. Do you recognize that article, newspaper article?

Mr. CLARK. Yes, sir, I do.

Mr. BARON. And is that the article that appeared in the paper sometime after your appearance before the grand jury?

Mr. CLARK. Yes, sir, it was.

Mr. BARON. I would like to move the admission of that article.

The CHAIRMAN. Is there objection?

Mr. ANDERSON. None.

The CHAIRMAN. It will be admitted.

[The document referred to was marked House Exhibit No. 188 and was received in evidence.]

Mr. BARON. Mr. Mayor, would you take a look at the MMAP program that is in front of you?

Mr. CLARK. Yes, sir.

Mr. BARON. Now, that indicates that time for the starting time of the program that morning?

Mr. CLARK. Yes.

Mr. BARON. Can you tell me what time is shown on there?

Mr. CLARK. It started at 7:30 a.m.

Mr. BARON. All right. And when does the program itself actually start?

Mr. CLARK. At 9:05.

Mr. BARON. OK. And can you see on there when is it that Judge Hastings is scheduled to give his speech?

Mr. CLARK. It doesn't give a time, but apparently right after that, after the introduction of Judge Hastings.

Mr. BARON. OK. Now, Mayor Clark, there has been testimony document of the fact that Mr. Ferguson's call to Waxy Gordon on the morning of the 6th, asking him to meet you at the MOC, at 11:30, that that call did not—it took place at 8:58 a.m. Are you aware of that?

Mr. CLARK. No, sir, I wasn't aware of the time.

Mr. BARON. Well, I am making you aware of the fact that records indicate that that call was made by Mr. Ferguson to Waxy Gordon at 8:58 in the morning. Can you account for the discrepancy in the time between the time that Judge Hastings made his speech and you recall that he came down and spoke to you subsequent to that speech——

Mr. CLARK. Now——

Mr. BARON. Let me finish my question.

Mr. CLARK. All right.

Mr. BARON [continuing]. And the fact that the call from Mr. Ferguson to Mr. Gordon takes place prior to 9:00 o'clock?

Mr. CLARK. No, sir, I don't remember the time, I don't recollect the time at all, because I know it was early in the morning, that's all.

Mr. **Baron**. Do you know Monsignor Bryan Walsh?

Mr. **Clark**. I do, sir.

Mr. **Baron**. And does he appear in the MMAP program for that day as someone who was going to participate in some way?

Mr. **Clark**. It shows Archbishop McCarthy giving the invocasstion, and I don't see his name, other than that. Wait a minute, back at 1:00 p.m., Monsignor Walsh was assigned to give the luncheon prayer.

Mr. **Baron**. OK. Do you recall meeting Monsignor Walsh on the morning of September 6th prior to the program beginning?

Mr. **Clark**. I do not.

Mr. **Baron**. Do you recall if Monsignor Walsh was there at all?

Mr. **Clark**. I can't attest to that, no, sir.

Mr. **Baron**. OK. Now, in your encounter with Judge Hastings that you described on the morning of September 6th, was that the only time you encountered him that morning?

Mr. **Clark**. Yes, sir, to the best of my recollection, the only time.

Mr. **Baron**. On page 2 of the transcript that is in evidence, there is a statement attributed to you, I am quoting, "And everybody saying hello, judge"——

Mr. **Anderson**. May I see what exhibit we are referring to, just by number?

Mr. **Baron**. Number 194B—"And everybody saying hello, judge, and he comes and says, "Steve, I want to tell you something," and then continues. Do you recall saying, "Hello, Judge," when you greeted him?

Mr. **Clark**. I remember saying "Hello, Judge," because he had his hand extended and I extended my hand.

Mr. **Baron**. OK. Do you have any racial or personal bias against Judge Hastings?

Mr. **Clark**. No, sir, none at all.

Mr. **Baron**. When he was being considered for the position of Federal judge, did you write any letter or any material in support of his possible nomination?

Mr. **Clark**. I did and I have done that for a number of Federal judges.

Mr. **Baron**. As Mayor of Dade County, can you give us some idea—let's talk back at 1985—approximately how often would you find yourself in the course of a week attending a breakfast or a lunch or a dinner with speakers?

Mr. **Clark**. Three, four times a week, at least.

Mr. **Baron**. When the FBI agents interviewed you in—do you recall about when that was, incidentally, for the first time?

Mr. **Clark**. In February of 1985—1986.

Mr. **Baron**. When the FBI agents interviewed you in February 1986 about the events of September 6, 1985, had you spoken to any law enforcement officers about that incident between those two dates?

Mr. **Clark**. None whatsoever.

Mr. **Baron**. Mayor Clark, you understand the gravity of these proceedings involving Judge Hastings?

Mr. **Clark**. I do, sir.

Mr. **Baron**. Now, you've testified under oath about this incident previously before the grand jury?

Mr. CLARK. Yes, sir, I have.

Mr. BARON. And did you testify under oath about this incident before the Judicial Investigating Committee?

Mr. CLARK. In Atlanta, yes, sir.

Mr. BARON. And did you testify under oath about this incident before the House Subcommittee?

Mr. CLARK. I sure did, yes, sir.

Mr. BARON. And you understand you're testifying here today under oath?

Mr. CLARK. Yes, sir.

Mr. BARON. Was it Judge Hastings who told you to stay away from Kevin Gordon because he's hot and he's using your name in Hialeah?

Mr. CLARK. Would you repeat that?

Mr. BARON. Was it Judge Alcee Hastings who told you to stay away from Kevin Gordon, he's hot, he's using your name in Hialeah?

Mr. CLARK. Yes, sir, it was.

Mr. BARON. Did you obtain any such information, directly or indirectly, from any other source?

Mr. CLARK. None whatsoever.

Mr. BARON. I have no further questions.

The CHAIRMAN. Is there cross-examination?

Mr. ANDERSON. Yes, Mr. Chairman.

I'm Terry Anderson. I think we've seen each other twice before.

Mr. CLARK. Yes, sir.

CROSS EXAMINATION

Mr. ANDERSON. And let me be sure that we are absolutely clear: On each of the prior occasions when you testified under oath, you spoke you are aware of the gravity of the circumstances, weren't you?

Mr. CLARK. I am, sir.

Mr. ANDERSON. And on each of those occasions, you said that it was after the speech——

Mr. CLARK. Yes, sir, it was.

Mr. ANDERSON [continuing]. That this took place?

Mr. CLARK. Yes.

Mr. ANDERSON. And on each of those occasions and today, you said that after the speech Judge Hastings came down from the podium——

Mr. CLARK. He stepped off of the podium and came down, and I was back two or three rows and the crowd was kind of—it was early in the morning and it was separating, and he came right directly to me.

Mr. ANDERSON. And it was at that point that he reached out and shook your hand and——

Mr. CLARK. And said that statement to me and nothing else.

Mr. ANDERSON. And again, today, as in the past, do I understand you correctly, it was at that point that you went back to your office, the Mayor's office——

Mr. CLARK. Yes, sir.

Mr. ANDERSON [continuing]. And about how far a drive was that?

Mr. **Clark**. About five or six minutes.

Mr. **Anderson**. And it was when you had returned to your office that you made the call to Peter Ferguson?

Mr. **Clark**. Yes, sir.

Mr. **Anderson**. And it was in that call that you told Mr. Ferguson to get Gordon to the Miami Outboard Club?

Mr. **Clark**. If he could find him, yes, sir.

Mr. **Anderson**. If he could find him. Now, in your prior testimony, we discussed briefly your recollection of the scene, when we were in the House, other events. Do you recall that?

Mr. **Clark**. Yes, sir.

Mr. **Anderson**. Mr. Chairman, might I approach the room and use this facility just to provide a graphic illustration of what the Mayor's recollection is?

The **Chairman**. Yes.

Mr. **Anderson**. Mayor Clark, if you would—I think we did this in the House—pretend you are there. Is that the first or second row that you think you are in?

Mr. **Clark**. Well, the chairs were being kind of dishoveled at that time, and it was I guess back about three or four, three rows from the podium.

Mr. **Anderson**. And if the podium is roughly where the Chairman is, how far back from that are you?

Mr. **Clark**. About this distance (indicating), a little farther.

Mr. **Anderson**. You will have to keep your voice up now.

Mr. **Clark**. About this distance (indicating).

Mr. **Anderson**. And it is your recollection—was there just a podium up there, do I recall that correctly?

Mr. **Clark**. Well, there was as table and some chairs for us to receive these awards to start with, and after that Judge Hastings, who was introduced by I think Attorney Jesse McCrary, and then made his speech from the podium.

Mr. **Anderson**. I'm not clear. I thought in the House your recollection was that there was just a podium. Where was Mr. McCrary?

Mr. **Clark**. He came to the same podium and then introduced Judge Hastings.

Mr. **Anderson**. Then, where was Mr. McCrary—were people seated up here, where the committee members are, or were they all in the audience, walking up to a podium?

Mr. **Clark**. No, sir, they were there to start with, then the program first started, and then they separated. I went down and sat in the crowd, as other persons did, and then Judge Hastings gave his speech from the podium.

Mr. **Anderson**. And so Judge Hastings was at the podium alone during his speech, is that correct?

Mr. **Clark**. To the best of my recollection.

Mr. **Anderson**. And your recollection, as I recall it, was and is today that after the speech he came down from the podium——

Mr. **Clark**. And stepped to the side and came over here, I am probably back in this direction——

Mr. **Anderson**. And he walked toward you——

Mr. **Clark** [continuing]. And he came up to me, and I think he had some papers in his left hand, and I said, "Hello, Judge," and he said, "Stay away from Kevin Gordon, he's hot, he's been using your name in the Hialeah area," and kept walking to the back where the entrance was in this room, and I didn't see him any more.

Mr. ANDERSON. Now, again, just so the committee can understand, in comparison to this room, what was the size of the room that Judge Hastings was speaking in?

Mr. CLARK. Well, the room would hold about 800 to 1,000 people, so it is a pretty large room, much larger than this.

Mr. ANDERSON. Much larger than this. And you said that—were those the doors back across the back wall, where the public or whoever would attend the event?

Mr. CLARK. There were numerous entrances and exits in the back.

Mr. ANDERSON. And what about behind the speaker's podium, was there any exits or entrances there?

Mr. CLARK. There were exits and entrances back there to supply the food, when there was food served in that area.

Mr. ANDERSON. So, it was in effect service entrances in the back and the main entrances, the service entrance was behind the podium, the main entrance was behind the audience?

Mr. CLARK. Yes, sir, that's where all the people left from.

Mr. ANDERSON. Was there a good crowd there that day?

Mr. CLARK. About 1,000, 800 to 1,000 people.

Mr. ANDERSON. Thank you, Mr. Clark. Perhaps if you can pick up the microphone, and would you move forward.

Now, there did come a time, I believe, when you were confronted by the FBI agents, they came and interviewed you concerning this matter, is that correct?

Mr. CLARK. Yes, sir, there was.

Mr. ANDERSON. And do you recall specifically who those agents were?

Mr. CLARK. Christopher Mazzella and Geoffrey Santini.

Mr. ANDERSON. And in that interview, did they at that time tell you that they had hard evidence that, in fact, Waxy Gordon had been using your name in connection with what they believed to be an improper zoning deal in Hialeah?

Mr. CLARK. I don't remember them stating just exactly that, but they were looking at Waxy Gordon, is who they were looking at.

Mr. ANDERSON. Well, did they tell you that, through a NAGRA body recorder or through some means, they had in fact recorded your statements participating in a conversation with Kevin Waxy Gordon and Johnny Rivero discussing using your influence with Silvio Cardoso to put together a deal for someone named Gino?

Mr. CLARK. They never said that to me.

Mr. ANDERSON. They did not confront you or tell you that?

Mr. CLARK. Not at that time, no, sir.

Mr. ANDERSON. Not at that time. Did they subsequently?

Mr. CLARK. Subsequently, I had this information just before I had—the FBI, I said to me, I said, "How in the world did Judge Hastings even know this?" and they said he had produced a wiretape, he had signed a wiretap. I had never heard of a wiretap before. And they said that—let me get my thoughts together here now.

They said that's the way that Judge Hastings knew about this, and that's the first time that I knew of any wiretap or anything else.

Mr. **Anderson**. Now, when did that conversation occur?

Mr. **Clark**. Early in March, just—well, it was after the first meeting, not at the first meeting in February, early in March.

Mr. **Anderson**. Well, there were—I gather from listening, and will learn more from Agent Mazzella, but I gather there were three meetings, a series of three meetings in February and March, is that correct?

Mr. **Clark**. There may have been three, there may have been four, because I had met, the night before I went to the grand jury, I met with Mr. Eric Holder.

Mr. **Anderson**. OK. Now, was it in the early March meetings that they told you that there had been a wiretap involved?

Mr. **Clark**. I asked that question and they produced this tape and I said, "How in God's name did Judge Hastings even know about this, I even know a Kevin Gordon" and——

Mr. **Anderson**. Now, which tape did they produce then, sir?

Mr. **Clark**. It was the tape that you just heard here. I heard that tape at that time, the first time I had heard that tape.

Mr. **Anderson**. Now, Agent Santini has testified the claim was enhanced, but did they tell you at the time that Mr. Gordon had represented to Mr. Rivero that he had once, in raising funds for you, delivered $40,000 to you in a brown paper bag?

Mr. **Clark**. I didn't—nobody told me that. I read that in the daily newspaper.

Mr. **Anderson**. And when did you read that?

Mr. **Clark**. I can't give you the exact date, whenever it appeared in the newspaper.

Mr. **Anderson**. Well, Agent Santini has told us now that Mr. Gordon acknowledged that claim is at least a little bit enhanced. Do you recall him ever delivering to you $4,000 in a brown paper bag?

Mr. **Clark**. I wish he had. I don't know where the bag is or where the elevator was. It never happened in my life. He was a person who did an awful lot of bragging, but very little production.

Mr. **Anderson**. Well, I do want to focus on the distinction between bragging and production. It is in the materials before this committee and it has been testified to by the agents, that on August 22, 1985, at a meeting at the Miami Outboard Club, you participated in conversation with Johnny Rivero, Peter Ferguson, Kevin Gordon, and yourself concerning a zoning deal in Hialeah. Did that conversation take place, sir?

Mr. **Clark**. I believe Kevin Gordon brought up to me that he is trying to place some zoning in Hialeah, and I told him that the only person I know out in Hialeah is Silvio Cardoso, who was a Councilman at the time, and I said that if you run into any problems, I'll give him a call. I never got another answer back. Nothing ever happened from that.

Mr. **Anderson**. And so you did recall that conversation?

Mr. **Clark**. Not with John Rivero, but with Kevin Gordon.

Mr. **Anderson**. Would you recall leaning over to—that Johnny Rivero was present for that?

Mr. CLARK. He may have been present. I think that day you speak of, after reading some of the testimony and everything else to refresh my memory, there was a little bumper pool table there and we had played some pool, but I didn't speak directly or indirectly to John Rivero.

Mr. ANDERSON. Now, help me with that and tell me——

Mr. CLARK. I didn't make any statements to John Rivero.

Mr. ANDERSON. Did you make any statements concerning Silvio Cardoso and the need to reach out and help you in the presence of Johnny Rivero?

Mr. CLARK. He may have been there, he possibly was there. I can't attest to that. But I did say that to Kevin Gordon.

Mr. ANDERSON. Now, Mayor Clark, moving back forward again, did the agents who interviewed you during the course of your interviews indicate that the Justice Department has authorized your prosecution at the time they were talking to you and interviewing you and seeking your cooperation?

Mr. CLARK. Never said anything about that.

Mr. ANDERSON. They never disclosed that to you at all?

Mr. CLARK. Prosecution of myself?

Mr. ANDERSON. Yes, sir.

Mr. CLARK. No, sir.

Mr. ANDERSON. Did they suggest that their investigation or offer you any inducements to cooperate?

Mr. CLARK. No, sir, none at all.

Mr. ANDERSON. And did they disclose to you the information you said you subsequently became aware of, did they disclose to you the information that had been submitted by way of allegations, often by Mr. Gordon, did they disclose that their investigation had at least come close to Mayor Stephen Clark?

Mr. CLARK. The only thing they told me that they were investigating Kevin Waxy Gordon and find out if what I told him that morning at the Miami Outboard Club was true, and I said that's true.

Mr. ANDERSON. And it is your testimony here today that your immediate response was, of course, I'll cooperate, without them giving you any reason to believe that you might be at risk if you did not?

Mr. CLARK. I had no idea, because I had done nothing wrong.

Mr. ANDERSON. I understand your conclusion on that, but they did not lead you to believe that they thought you had done anything wrong or that you would be at any risk if you failed to cooperate?

Mr. CLARK. No, sir, not at all.

Mr. ANDERSON. So, they didn't lead you to believe—I mean, as far as you were concerned when they confronted you, you could have said, "Guys, get out of my office, I don't want to be involved"?

Mr. CLARK. Well, it was at my home, yes.

Mr. ANDERSON. "Get out of my home, I don't want to be involved."

Mr. CLARK. Yes.

Mr. ANDERSON. And there was no leverage they had, they would have had to say, "Well, Mr. Mayor, I'm sorry you see it that way," and they would have walked off into the sunset, end of story. Is that your——

Mr. Clark. They didn't promise me anything. They just asked would I cooperate, and I said fully.

Mr. Anderson. And that was it, just, "Mr. Mayor, would you cooperate"——

Mr. Clark. And then the information I gave them, yes, sir.

Mr. Anderson. Now, Mr. Mayor, let me go back and develop a bit a point that was developed on direct. You indicated, I think, that to the best of your recollection you met with Judge Hastings in 1970?

Mr. Clark. That's the first time I met him, yes, sir.

Mr. Anderson. And at that time, if you recall, where was Judge Hastings living?

Mr. Clark. I don't know at that time.

Mr. Anderson. Was it Miami or Fort Lauderdale?

Mr. Clark. I don't know at that time, sir. I don't know exactly where he lives today, but I understand it is in Broward County, which is north of Dade County.

Mr. Anderson. And prior to that, were you aware of Judge Hastings at that time as a political figure in south Florida?

Mr. Clark. Yes, sir, if a man is running——

Mr. Anderson. In fact, he was running in the Democratic Primary for the Senate at the same time you were campaigning, wasn't he?

Mr. Clark. I guess that would be a politician, yes, sir, that's right.

Mr. Anderson. That would be a politician, and you would meet at occasions where you would shake hands and greet?

Mr. Clark. Yes, sir.

Mr. Anderson. Now, either prior to that time—prior to that time, had you ever been in Judge Hastings' home?

Mr. Clark. No, sir.

Mr. Anderson. Had he ever been in your home?

Mr. Clark. No, sir.

Mr. Anderson. Had you ever been in his office?

Mr. Clark. No, sir.

Mr. Anderson. Had he ever been in your office?

Mr. Clark. No, sir.

Mr. Anderson. Had he ever done any legal work, to the best of your knowledge, for the county?

Mr. Clark. None whatsoever.

Mr. Anderson. Since that date, between that date and the day he assumed the bench, was Judge Hastings ever in your home?

Mr. Clark. No, sir.

Mr. Anderson. Were you ever in his home?

Mr. Clark. No, sir.

Mr. Anderson. Were you ever in his office?

Mr. Clark. No, sir.

Mr. Anderson. Was he ever in your office?

Mr. Clark. No, sir.

Mr. Anderson. Do you ever recall talking with him on the phone about business or other matters?

Mr. Clark. No, sir.

Mr. Anderson. And subsequent to the time he came on the bench, did you and he ever exchange visits in your homes?

Mr. Clark. No, sir.

Mr. Anderson. Offices?

Mr. Clark. No, sir.

Mr. Anderson. Do you recall having had telephone conversations with him?

Mr. Clark. I don't recall the first one, no, sir.

Mr. Anderson. So, as of September 6, 1985, your total association with Judge Hastings, as I understand it, is the fact that you would occasionally pass at receptions, MMAP conferences or other types of things and would recognize each other as public figures in the community?

Mr. Clark. I think I recognized him one day on the expressway, we waved and that was it.

Mr. Anderson. But that really is the nature of the relationship that existed from the outset and indeed through September 6, 1985, is that correct?

Mr. Clark. Truly.

Mr. Anderson. Now, you did have a somewhat different relationship with some FBI personnel, didn't you?

Mr. Clark. Yes, sir.

Mr. Anderson. And one of those FBI personnel was Anthony Amoroso, wasn't it?

Mr. Clark. Yes, sir.

Mr. Anderson. He was a golf partner of yours, is that correct?

Mr. Clark. He was not a golf partner, but we played golf in the same foursome.

Mr. Anderson. Foursome. Who else was a member of that foursome? Do you recall?

Mr. Clark. It was Tony Amoroso and Glenn Whittle.

Mr. Anderson. And who is Glenn Whittle?

Mr. Clark. Glenn Whittle is an insurance man.

Mr. Anderson. And has Glenn Whittle been active in politically supporting you?

Mr. Clark. Well, I hope he has.

Mr. Anderson. Well, in particular, is Mr. Whittle one of the people you rely on in advising you with repect to people who might be hired by the county or things like that?

Mr. Clark. No, sir, I don't have any authority in hiring people for the county. That is up to the Manager's Office.

Mr. Anderson. Well, do you have any authority in making recommendations?

Mr. Clark. I could make a recommendation, but I have to also have a disclaimer in it that I'm not trying to influence hiring or firing of anyone.

Mr. Anderson. But Mr. Whittle is one of the golf foursome and he——

Mr. Clark. Mr. Whittle, he sold me an insurance policy, I think the first one, back in about 1965 or 1966.

Mr. Anderson. And as of 1985, he was still a member of the golf foursome, is that correct?

Mr. Clark. No, sir. We haven't played golf in the last I guess two or three years.

Mr. Anderson. Well, that takes us through 1985, and it's 1989 now, Mayor.

Mr. Clark. Yes, sir. Well, I said the last two or three years.

Mr. Anderson. But were you still playing golf in 1985?

Mr. Clark. I would suspect in 1985 I was, but I can't attest to that.

Mr. Anderson. Now, you have identified Agent Amoroso, and Glenn Whittle as three of the foursome. Who is the fourth in the foursome?

Mr. Clark. Myself.

Mr. Anderson. Agent Amoroso, Glenn Whittle, Stephen Clark——

Mr. Clark. Jerry Forrester.

Mr. Anderson. Who is Jerry Forrester?

Mr. Clark. He's a member of the FBI.

Mr. Anderson. And did you also know H. Paul Rico?

Mr. Clark. Yes, sir, I know him.

Mr. Anderson. How do you know him, sir?

Mr. Clark. Well, I just know him, I've met him on the golf course. He is a former agent of the FBI, and I've met him on numerous occasions, played golf maybe 10 times with him.

Mr. Anderson. And are you aware that he manages the Jai Alai Fund down in Miami?

Mr. Clark. I understand he has some authority out there.

Mr. Anderson. And are you aware that a significant number of retired FBI agents and family members are employed out there?

Mr. Clark. Some, yes, sir.

Mr. Anderson. Now, Tom Dowd is another name that has crept in here. Do you know him, sir?

Mr. Clark. Yes, I do.

Mr. Anderson. How do you know him?

Mr. Clark. Well, I met him through Mr. Forrester and Mr. Amoroso, and one day—I have a notary's license and I married him and his wife out at the golf course.

Mr. Anderson. Do you recall how long ago that was?

Mr. Clark. I can't give you the date, but it has to be back at least three or four years ago, maybe five. I can't give you the exact date.

Mr. Anderson. And were Agent Amoroso and Agent Forrester in attendance that day?

Mr. Clark. I believe so, yes, sir.

Mr. Anderson. Was Glenn Whittle there?

Mr. Clark. I can't attest to that. He may or may not have been.

Mr. Anderson. Paul Rico?

Mr. Clark. No, sir, I didn't see him.

Mr. Anderson. OK. About how many agents or other people were there then?

Mr. Clark. It was only a crowd of possibly six or seven people, with the bride and groom.

Mr. Anderson. Pete Ferguson.

Mr. Clark. Yes.

Mr. Anderson. He has been identified as your campaign manager. How long have you and he been associates or had a relationship?

Mr. Clark. I've known Mr. Ferguson, I guess, about probably about 20–22 years.

Mr. Anderson. And what is Mr. Ferguson's position, apart from being your campaign manager?

Mr. Clark. He works for a Fiscal Operations which runs the massive cranes, loading and unloading ships at the Port of Miami.

Mr. Anderson. Sometimes that's been a little confusing in the papers. I understand that Fiscal Operations is a separate company.

Mr. Clark. It is.

Mr. Anderson. It is not the Fiscal Operations of the Port of Miami——

Mr. Clark. No, sir.

Mr. Anderson [continuing]. It is Fiscal Operations——

Mr. Clark. It's a company that the county leases the cranes from. I think they are based in California, I'm not positive.

Mr. Anderson. May I have just a moment, Mr. Chairman?

The Chairman. Yes, you may.

[Pause.]

Mr. Anderson. Now, Mayor Clark, the committee has at least heart questioning suggesting by Mr. Baron—it will probably receive evidence with respect to—a claim by Agent Dowd that in July, Glenn Whittle called and asked whether the FBI was investigating you and Mr. Ferguson. Did you authorize that call?

Mr. Clark. I have no knowledge of that call whatseover.

Mr. Anderson. Have you had occasion to discuss that with Pete Ferguson?

Mr. Clark. I have not, sir.

Mr. Anderson. If Tom ~~Dowd, the~~ FBI agent, said that call was made, would you believe that it was made?

Mr. Clark. Well, I guess if the call was made, the call was made, but I have no knowledge of the call at all.

Mr. Anderson. And did you at that time have any knowledge of an investigation into your affairs?

Mr. Clark. No, sir, none whatsoever.

Mr. Anderson. Do you know a man named, or did you know a man named Alberto San Pedro?

Mr. Clark. I do.

Mr. Anderson. And did you meet with him—did you have a closer relationship with him than you do with Alcee Hastings?

Mr. Clark. Absolutely not. May I embellish a might?

Mr. Anderson. A might, please.

Mr. Clark. He made the statement in the paper that he invited me to his house, he summoned me to his house, he slapped me in the face, I got down on my knees and I apologized for the police making a raid on one of his nude dancing operations. I don't know where the man lives, I don't know the man and I don't know where he is today.

But he did make a statement in the paper that he had the Mayor and six commissioners in his pocket and seven judges in his pocket, and I think his testimony has been discretited. I don't know whether he made that statement or his girlfriend made it.

Mr. Anderson. But you did know and have relationships with Silvio Cardoso, did you not?

Mr. Clark. I just know Silvio Cardoso. I have no relationship. I have been to his house I think one time, and he lives out in Hialeah and I haven't been back to his house since that time.

Mr. ANDERSON. And you were aware that his name was linked in these Miami Herald stories that have been reported from time to time with possible zoning corruption in Hialeah?

Mr. CLARK. I don't know whether he was linked to that or not, but I understands that his name has been in the paper quite frequently.

Mr. ANDERSON. Well, you understand that his name has been in the paper reporting that he has been federally indicted?

Mr. CLARK. I heards that, yes.

Mr. ANDERSON. And you understand the indictment related to a purchase of allegedly confidential information from what he believed was an FBI source?

Mr. CLARK. That's what the newspaper said.

Mr. ANDERSON. And you understand that he has pled guilty to at least one count of that charge?

Mr. CLARK. That is what it says, yes.

Mr. ANDERSON. And how long had you known Silvio Cardoso?

Mr. CLARK. I've known him since he was a young man in the area, and I think he played baseball for the University of Miami and he ran for office and was elected out in Hialeah. I can't give you the exact date, maybe 10–12 years, maybe 15.

Mr. ANDERSON. Now, Mr. Mayor, what is your salary as the Mayor of Metropolitan Dade County?

Mr. CLARK. I have a salary of $6,000 a year, and we have about maybe $6,000 in *perc* for insurance, automobile expense and things of that nature.

Mr. ANDERSON. And Mr. Gordon is reported to have told Mr. Rivero back in 1985 that you were a millionaire. Is that essentially correct, sir?

Mr. CLARK. No, sir, that's nonsense. I wish I were.

Mr. ANDERSON. Mr. Chairman, I don't think I have any more questions of this witness.

The CHAIRMAN. Is there redirect examination?

REDIRECT EXAMINATION

Mr. BARON. Very briefly.

Mayor Clark, I was unclear about one small portion of your testimony. This incident involving somebody named Alberto San Pedro, are you saying that you were at his place and he did slap you, or is that what he said in the paper and you said it didn't happen?

Mr. CLARK. No, that was the story. That was the story. I said I wish he had tried that.

Mr. BARON. No further questions. I just didn't understand the testimony.

The CHAIRMAN. Is there any recross?

Mr. ANDERSON. No, Mr. Chairman.

The CHAIRMAN. Do any committee members have questions? Senator Rudman?

EXAMINATION BY THE COMMITTEE

Senator RUDMAN. Mayor, on the transcript of your conversation that was taped, I guess at the Miami Outboard Club, do you have that in front of you, House Exhibit 1946?

Mr. CLARK. No, sir, I do not.

Senator RUDMAN. Would the clerk give that to him?

Mr. BARON. The 194B, I believe.

Mr. CLARK. Yes, sir.

Senator RUDMAN. Now, have you looked at that transcript before today?

Mr. CLARK. Yes, sir, I've seen it before. In fact, this has been in every newspaper in town.

Senator RUDMAN. I assume so. Would you describe your conversation here as indicating that you were friendly with Mr. Gordon?

Mr. CLARK. Well, I knew the man, but I wasn't a constant associate of his or anything of that nature. I would see him from time to time, but other than the time that I asked Mr. Ferguson was there any predestined arrangement for me to meet with him.

Senator RUDMAN. How long had you known him?

Mr. CLARK. I've known him since about 1964.

Senator RUDMAN. And in what capacities have you known him? What were you doing and what was he doing?

Mr. CLARK. I was a City Commissioner and I was Mayor of the City of Miami at that time, back in the late sixties, and he was a code enforcement officer. When you process a set of plans, you have to go through the different departments to get the okay for lighting and plumbing and everything else, and his was code enforcement, to make sure that setbacks were right and everything else. That is the way that my——

Senator RUDMAN. And you were a City Commissioner?

Mr. CLARK. Yes, City Commissioner.

Senator RUDMAN. And he worked for the city?

Mr. CLARK. No, sir. You can have an outside job, it's not a total occupation, the commission.

Senator RUDMAN. I didn't mean that. I mean, when you were the City Commissioner, he was an enforcement inspector?

Mr. CLARK. He was a code enforcement——

Senator RUDMAN. So, eventially you were in a position of office and he was an employee of the city?

Mr. CLARK. Yes, sir, but I was—my approach with him or by contact with him was as a general contractor, which I am.

Senator RUDMAN. I see. So, you were a general contractor and he was a code enforcement inspector?

Mr. CLARK. Well, he was the one who processed plans or plan processor, primarily.

Senator RUDMAN. Now, I only really have one other question. I want to turn to page, I guess it is page 2——

Mr. CLARK. Yes, sir.

Senator RUDMAN [continuing]. No, I guess it is page 3, if you look at page 3.

Mr. Clark. Yes, sir.

Senator RUDMAN. Incidentally, before you look at that, did I understand you to say, in response to Mr. Anderson's cross-examination, that you had never heard of wiretaps before?

Mr. CLARK. No, sir. I've heard of wiretaps, but this is the first time in this situation, after the judge told me what he told me, that I heard about a wiretap when they disclosed that to me sometime in March.

Senator RUDMAN. It's the first time you ever heard personally about a wiretap, is that what you're saying?

Mr. CLARK. Yes, sir.

Senator RUDMAN. Look at page 3.

Mr. CLARK. Yes.

Senator RUDMAN. The conversation, the third line down, you are saying, "How in the hell would he know that?" He says, "I have no idea." You say, "Did you deal with any spooks on that thing?"

Mr. CLARK. What I meant at that time, was he dealing with any scurrelous or bad people, and if he was, he had better stop dealing with them.

Senator RUDMAN. Is that what "spooks" means to you?

Mr. CLARK. Well, it does, sir. I'm an Irish Catholic and I will give you an example. I have great support among my black constituents—and this has been in the paper for three years——

Senator RUDMAN. That doesn't answer my question.

Mr. CLARK. No, sir, spooks doesn't mean black or anything else to me.

Senator RUDMAN. Well, why don't you just tell me about your black constituents?

Mr. CLARK. Sir, you referreds to that, I thought, sir.

Senator RUDMAN. Pardon?

Mr. CLARK. I thought you referred to that, does that mean you have problems with the black people.

Senator RUDMAN. Mayor, I'll ask the questions——

Mr. CLARK. Sorry.

Senator RUDMAN [continuing]. You give the answers.

Mr. CLARK. Yes, sir.

Senator RUDMAN. I asked you if "spooks" had any other meaning to you, and you said no, and then you told me about your "black constituents." Now, did "spooks" mean black to you sometimes?

Mr. CLARK. It has been referred to that, I've been accused of that and that's the reason I responded, and I'm sorry, sir.

Senator RUDMAN. Thank you very much.

Mr. CLARK. Yes, sir.

The CHAIRMAN. Are there any other questions by the committee? Senator Lieberman?

Senator LIEBERMAN. Mayor Clark, have you ever been arrested for anything?

Mr. CLARK. Never, sir.

Senator LIEBERMAN. Let me ask you a little bit about Kevin Waxy Gordon. Was he ever arrested for anything, to the best of your knowledge?

Mr. CLARK. I couldn't answer that, sir, I do not know.

Senator LIEBERMAN. From the little picture we get of him from the testimony and the tapes we've heard, he sounds to me like a wheeler-dealer, a fixer in local government. Would you say that is a fair representation of him?

Mr. CLARK. Well, he is a very braggadocious person, always bragging about a lot of things, but I don't know of any instance that he was involved in, was a fixer-dealer.

Senator LIEBERMAN. You don't have any reason to believe that he was accepting bribes to influence zoning cases, code enforcement or anything?

Mr. CLARK. No, sir.

Senator LIEBERMAN. To the best of your knowledge?

Mr. CLARK. To the best of my knowledge, no, sir.

Senator LIEBERMAN. What was the relationship between Peter Ferguson and Kevin Gordon?

Mr. CLARK. I can't—well, they've been friends, I guess, they see each other occasionally, they saw each other occasionally before Mr. Gordon passed away. But other than just, you know, a friends, that's all.

Senator LIEBERMAN. I'm wondering what led you to call Peter Ferguson to arrange the meeting with Waxy Gordon after the judge allegedly gave you that information.

Mr. CLARK. Mr. Gordon from time to time would be over at the Miami Outboard Club, and I knew that he and Pete were friends, I don't know of what caliber or what makeup, and I said, "If you know where you can find Kevin Gordon"—I didn't know whether he could or not—I said, please, and he had told someone that he was now working at Surfside, I said, "Please contact him and tell him I'd like to see him at 11:30 at the Miami Outboard Club."

Senator LIEBERMAN. Basically, you didn't take the advice that you're telling us that Judge Hastings gave you, which was to stay away from Waxy Gordon. Why didn't you?

Mr. CLARK. Well, I was so astounded at the time that I didn't want my name—I didn't know whether this was the Kevin Gordon the judge was telling me about or not, I don't know whether there is another one in Dade County, of two million people, there possibly could be.

Senator LIEBERMAN. Did he say Kevin Gordon or Waxy Gordon?

Mr. CLARK. He said Kevin Gordon. He didn't say Waxy.

Senator LIEBERMAN. So, you went to clarify whether this was the——

Mr. CLARK. I just wanted my name clear, because I haven't been involved in any problem in my life and——

Senator LIEBERMAN. And you basically went to threaten him, to tell him to cut it out, if that is what he was doing?

Mr. CLARK. I said, "If you're doing this," yes, sir, I said, "If you're doing this, you'd better stop it right now, because I don't want my name bandied around."

Senator LIEBERMAN. Right. Let me go now a little bit to your relationship with Judge Hastings. You said you probably met him back in 1970 when he was a candidate for the United States in the primary together in Florida?

Mr. CLARK. Yes.

Senator LIEBERMAN. Could you estimate how often you saw him in the years between then and 1985?

Mr. CLARK. I would say in that length of time, from 1970 to 1985, I didn't basically come in contact—I would see him on television, I would see his picture in the paper, but for conversation or seeing him on a personal reason or any other reason, that never happened. I wouldn't see him that often.

Senator LIEBERMAN. Was he a respected political leader in the Dade County area?

Mr. CLARK. Yes, sir, he is.

Senator **Lieberman**. Had you ever gone to him to solicit his support in an election?

Mr. **Clark**. No, sir, I did not.

Senator **Lieberman**. And yet you wrote a letter for him, a letter of reference, I presume, to become a Federal judge. How did that come about?

Mr. **Clark**. Well, I receive recommendations many, many times and I knew of Judge Hastings at the time and they said his name is up for appointment to be a Federal judge, and I don't know where the request came from, I can't deliver that to you, sir, but I said I'd be happy to, I think he would be a good judge.

Senator **Lieberman**. So, you wrote basically a standard letter of reference?

Mr. **Clark**. Yes, sir. Well, it was standard, yes, sir.

Senator **Lieberman**. On the morning when Judge Hastings spoke when you say he came off the podium and gave you that warning, I take it you didn't discount the accuracy of the warning? I mean you believe what he said?

Mr. **Clark**. Yes, sir, I did believe what he said.

Senator **Lieberman**. And that's why you went to Gordon to clarify it?

Mr. **Clark**. I wanted to find out first-hand. I didn't know whether that was the Kevin Gordon he was talking about or not.

Senator **Lieberman**. Why do you think the judge gave you that warning? What do you think his motive was?

Mr. **Clark**. Sir, I have searched my mind and heart and I don't know why. I can't answer that.

Senator **Lieberman**. I mean might it have been—did he consider himself a friend of yours, was he doing you a political gesture, a political favor by giving you that warning?

Mr. **Clark**. Maybe he was, but to me it was out of the blue.

Senator **Lieberman**. OK. No further questions.

Thank you, Mr. Chairman.

The **Chairman**. May I ask one final question—oh, there are some further questions, excuse me. Senator Bryan?

Senator **Bryan**. Thank you very much, Mr. Chairman.

Mr. Mayor, after the judge gave you this warning at the breakfast meeting that you have described to us, you seem to attach considerable urgency to it, making the phone call to Mr. Ferguson and arranging the meeting with Mr. Gordon on the same day, at 11:30. Do I have the time sequence correct, sir?

Mr. **Clark**. That's true, yes, sir.

Senator **Bryan**. You have been in public office for a number of years, from what we understand about your record. As a public official, have you had on prior occasions unrelated to this, unrelated to Mr. Gordon, has it come back to you that people have ostensibly used your name as "I know the Mayor, I can do this for you, I can get this done, I think if I talk to him I can get you an appointment," have you had that kind of experience over the years as Mayor?

Mr. **Clark**. Many, many times, sir. Yes, sir.

Senator **Bryan**. And when you've had those kinds of reports that come back to you, have you made it a practice to immediately call the individual who is ostensibly the source to that claim and to meet with him and dress him or her down as a consequence of those kinds of reports?

Mr. CLARK. Well, I have at times, but they never came from a Federal judge before.

Senator BRYAN. But you have had occasions, I take it, over the past where you have been satisfied that somebody indeed has used your name without your authorization, claiming that they can get an appointment for a son or daughter or relative or something like that?

Mr. CLARK. Yes, sir, I've had those, but that's not the gravity of this situation.

Senator BRYAN. What I am trying to ascertain from you is that people in public life frequently have individuals who know them claim that they can do certain things as a result of that personal relationship.

Mr. CLARK. That's true.

Senator BRYAN. And I would presume that over many, many years you've had people make those kind of reports back to you, and you have probably believed that some people have used your name without your authorization and to make statements on your behalf that you in no way would authorize. Would that not be correct?

Mr. CLARK. That's correct.

Senator BRYAN. And yet in this particular instance, you attached considerable gravity, I take it, to the statement that was made, vague as it was, and in effect summoned Mr. Gordon to this meeting at 11:30. Why did you attach such significance to—I understand that you believe that Judge Hastings was accurately reporting that Mr. Gordon was using your name, but why did you attach such urgency to it, I want to meet this man today at 11:30?

Mr. CLARK. I just felt that when Judge Hastings told me that, he must know something and I wanted to get to the bottom of it, and I did.

Senator BRYAN. Did you suspect that Mr. Gordon was involved in some kind of activity that had engaged the attention of the Federal Government or law enforcement authorities?

Mr. CLARK. No, sir, I didn't have any indication that he was involved in anything, and the only indication I had was that when he was using my name, and there was a big, big investigation going on for two or three years prior to this time in Hialeah, I didn't want my name involved out there at all, because I have nothing to do with the City of Hialeah.

Senator BRYAN. So, you did associate that perhaps the statements that were related to you by the judge ostensibly made by Mr. Gordon may have related to the Hialeah investigation that you had read about in the newspaper and that you were aware was ongoing?

Mr. CLARK. When the judge said, "He's using your name in the Hialeah area," that is when I became a little suspicious.

Senator BRYAN. No further questions.

The CHAIRMAN. Senator Kerrey?

Senator KERREY. Mayor Clark, under cross-examination from Mr. Anderson, the question was asked of whether or not Waxy Gordon had left $4,000 in an envelope for you, and you said no, but I wish he had.

Mr. CLARK. Well, I may have said that just in jest, but no, he did not, sir.

Senator KERREY. You said it in jest?

Mr. CLARK. Yes, sir, I said that in jest. He said that he put $40,000, it was in the paper that he put $40,000 in a brown bag and gave it to me in the elevator, and my response was where's the elevator. I didn't know what he was talking about. Why he said that, I do not know, but, sir——

Senator KERREY. I'm trying to determine why you said "I wish he had."

Mr. CLARK. Well, I made a mistake there. I'm sorry I did.

The CHAIRMAN. Senator Pryor, did you have a question?

Senator PRYOR. Yes, sir. Thank you, Mr. Chairman. I thought Senator Kerrey was going to continue there.

You testified, Mayor, that you knew Paul Rico.

Mr. CLARK. Yes, sir.

Senator PRYOR. Now, he was not a regular golfing companion of yours in your foursome, is this correct?

Mr. CLARK. That's true, sir.

Senator PRYOR. But you had three other gentlemen who were FBI agents who were, in fact, FBI——

Mr. CLARK. Two others.

Senator PRYOR. Two others?

Mr. CLARK. Yes, sir.

Senator PRYOR. Now, when you played golf with these gentlemen in your foursome, did you rent golf carts and ride around in the golf carts, or did you walk?

Mr. CLARK. We had golf carts, but I had a privilege, sir, at the golf course. I could take two foursomes and they would supply the carts.

Senator PRYOR. I see. And the green fees?

Mr. CLARK. And they would supply the green fees.

Senator PRYOR. So, basically, the agents and the other three members of your foursome were your guests——

Mr. CLARK. Yes, sir.

Senator PRYOR [continuing]. But you didn't have to pay for them each time?

Mr. CLARK. No, sir, I didn't.

Senator PRYOR. That was a privilege extended to the Mayor?

Mr. CLARK. Yes, it was.

Senator PRYOR. That was one of the so-called *percs*. After this relationship and you continued playing, and that would have been during the 19——

Mr. CLARK. Early eighties.

Senator PRYOR. Early eighties, along in that period—was there any discussion that you ever heard among your companions out there on the course or maybe after the game was over about the bribery case or conspiracy case of Judge Alcee Hastings, United States Federal District Judge?

Mr. CLARK. No, sir, I never heard any conversation of that nature at all. It never came up.

Senator PRYOR. Thank you, sir.

Mr. CLARK. Thank you, sir.

Senator PRYOR. Thank you, Mr. Chairman.

The CHAIRMAN. Are there other questions?

[No response.]

The CHAIRMAN. Mr. Mayor, let me ask: In the conversation that you had with the FBI agents or anybody from the Justice Department, was there ever a suggestion that you picked up that they were trying to, maybe not quite threaten you, but indicate that it would be in your best interest to cooperate with them and help them get this done, and that it was not strictly a voluntary issue with you?

Mr. CLARK. No, sir, Senator, never did they threaten me or give me any latitude of saying that if you do this, we'll do that, or anything like that, no conversation. They asked me would I cooperate and I said totally.

The CHAIRMAN. All right.

Any other questions of this witness?

[No response.]

Mr. CHAIRMAN. Is there any reason this witness cannot be excused?

[No response.]

The CHAIRMAN. If not, Mr. Mayor, we very much appreciate your testimony and you are excused.

Mr. CLARK. Thank you very much.

The CHAIRMAN. The committee will stand in recess until 9:30, Monday. I will advise counsel that in about 10 minutes we will return and do the witness that respondent requires us to do by videotape.

[Whereupon, at 4:23 p.m., the committee was adjourned, to reconvene on Monday, July 24, 1989, at 9:30 a.m.]

In The
SENATE OF THE UNITED STATES
Sitting for the Trial of an Impeachment

THE HOUSE OF REPRESENTATIVES,
OF THE UNITED STATES,

plaintiff,

v.

THE HONORABLE ALCEE L. HASTINGS,
a Judge of the United States District Court
for the Southern District of Florida,

respondent.

TENTATIVE ORDER OF WITNESSES FOR RESPONDENT

Respondent submits the following list of witness to apprise the Committee and the House Managers of the order in which he wishes to call his witnesses. The present list and the order established should be reviewed with the following points in mind:

1. We wish to call Margaret Dabreau Owens (and if the Managers or the Committee would prefer (Pearl Dabreau Mapp) out of sequence. Ms. Owens is scheduled to leave the country on Monday, July 24, at 11:00 a.m. with her children for an extended vacation. We would ask that her brief, but significant testimony be taken by videotape deposition over the weekend.

2. In order to permit an orderly development of respondent's case, we ask that respondent be permitted to testify twice -- once concerning the accusations made in Article XVI (the Mayor Clark accusation) and again at the end of respondent's case concerning

the remaining Articles and the case as a whole.

3. We presently expect to limit the number of additional witnesses who attended the Metro-Miami Action Plan Conference to three out of the some 800 who were there. We believe it should suffice to provide the Committee with adequate evidence from those who were at the scene of the alleged crime. We shall supply the Committee and the Managers with the names as soon as we have confirmed the names of those who can be available. We expect to have the information tomorrow.

4. We have not made a determination regarding the need for evaluating linguistic, communication, or their experts for respondent's case. We hope to make the necessary assessments by Monday, July 24, 1989.

Tentative Order

1. Margaret Dabreau Owens - 20 minutes
2. The Honorable James Lawrence King - 1 hour
3. Lanny Sumpter - 20 minues
4. Flauren Joyette Vickers - 40 minutes
5. Patricia Thomas - 20 minutes
6-8 Three persons from MMAP Conference: 60 minutes (total)
9. The Honorable Alcee L. Hastings (Clark) - 1 hour
10. Glenn Whittle - 30 minutes
11. H. Paul Rico - 30 minutes
12. Peter Ferguson - 30 minutes
13. Silvio Cardoso - 30 minutes

14. Anthony Amoroso - 30 minutes
15. Jesse McCrary - 1 hour
16. Pearl Dabreau Owens - 30 minutes
17. John Crump - 30 minutes
18. Warren Hope Dawson - 15 minutes
19. Stephen Selig, III - 15 minutes
20. Benjamin Daniel Brown - 15 minutes
21. Charles Duncan - 15 minutes
22. The Honorable Henry Latimer - 15 minutes
23. James Cobb - 30 minutes
24. Andrew Chisolm - 15 minutes
25. Dudley Williams - 15 minutes
26. Norma Stallworth (if locatable) - 10 minutes
27. James Gunn - 15 minutes
28. The Honorable William M. Hoeveler - 30 minutes
29. Jimmy Harmon - 20 minutes
30. Kenneth Robinson - 20 minutes
31. Roger Spaeder - 15 minutes
32. Joseph Nesline -
33. Kendall Schull - 30 minutes
34. The Honorable Matthew Perry - 15 minutes
35. Shirley Pride - 30 minutes
36. The Honorable Edward Rogers - 15 minutes
37. Steven Allen - 30 minutes
38. Reid Weingarten - 1 hour
39. Betty Williams - 1 hour
40. Martin Raskin - 15 minutes

41. Edward B. Shohat - 15 minutes

42. The Honorable Alcee L. Hastings - 2 hours

Respectfully submitted,

Patricia Graham Williams
Miami, Florida

Terence Anderson
Coral Gables, Florida

Robert S. Catz
Cleveland, Ohio

Counsel for
United States District Judge Alcee L. Hastings

IMPEACHMENT OF JUDGE ALCEE L. HASTINGS

MONDAY, JULY 24, 1989

U.S. SENATE,
IMPEACHMENT TRIAL COMMITTEE,
Washington, DC.

The committee met, pursuant to notice, at 9:35 a.m., in Room SH-216, Hart Senate Office Building, Hon. Jeff Bingaman, chairman of the committee, presiding.

Present: Senators Bingaman, Specter, Leahy, Durenberger, Pryor, Rudman, Bryan, Bond, Kerrey, Gorton, Lieberman, Burns, and Domenici (ex officio).

House managers present: Representatives Bryant, Synar, Gekas, and Fish.

Counsel Present: Terence J. Anderson, counsel for Judge Hastings; Patricia Graham Williams, counsel for Judge Hastings; Robert S. Catz, counsel for Judge Hastings; Alan I. Baron, special counsel, House Impeachment Committee; Janice E. Cooper, Patricia Wynn, Lori E. Fields, assistant special counsel, House Impeachment Committee; Michael Davidson, Senate Legal Counsel; Elaine Stone, counsel, Senate Impeachment Trial Committee; Mark Klugheit, counsel, Senate Impeachment Trial Committee; Bruce McBarnette, counsel, Senate Impeachment Trial Committee; Marvin Arrington, counsel for William A. Borders, Jr.; and Michael Rosier, counsel for William A. Borders, Jr.

Staff Present: Anthony Harvey, Administrator, Senate Impeachment Trial Committee; P. Casey McGannon, staff assistant, Senate Impeachment Trial Committee; and Isabel McVeigh, staff assistant, Senate Impeachment Trial Committee.

The CHAIRMAN. The committee will come to order.

The first item of business this morning was to hear testimony from William A. Borders, Jr., about the issues pending before the committee in this impeachment trial.

Is Mr. Borders present?

Mr. BORDERS. Yes, Your Honor.

The CHAIRMAN. Could Mr. Borders please come forward with his attorneys?

Would you please raise your right hand? Do you, William A. Borders, Jr., swear and affirm that the evidence you shall give in the case now pending between the United States and Judge Alcee L. Hastings shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BORDERS. I do.

The CHAIRMAN. Please be seated.

Could you first just state your name, please, and your address?

Mr. Arrington. Are you talking to me?

The Chairman. First, Mr. Borders, your name and address, if you would, please?

APPEARANCE OF WILLIAM A. BORDERS, JR.

Mr. Borders. William A. Borders, Jr. I live at 28 50th Street, N.E., Washington, DC.

The Chairman. I notice you are accompanied by counsel. If your counsel could identify themselves for the record, please?

Mr. Arrington. My name is Marvin S. Arrington, a practicing attorney in Atlanta, Georgia.

The Chairman. Mr. Arrington.

Mr. Rosier. For the record, my name is Michael Rosier. I'm a practicing lawyer here in the District of Columbia.

The Chairman. Mr. Rosier.

I have several questions I would like to present for the committee initially here, if I could, Mr. Borders. Were you indicted in December 1981 on charges, including a conspiracy, charges of a conspiracy with Judge Hastings to corruptly solicit and accept money in return for a promise by Judge Hastings to reduce the sentences of Tom and Frank Romano from imprisonment to probation?

Mr. Borders. I refer it to my counsel.

Mr. Rosier. If I could, before we begin, as this committee is no doubt aware, the application for immunity which was sought pursuant to 18 U.S.C. 6005 is currently on appeal. That provision of the Code relates to grants of immunity where a person seeks not to testify on the basis of their rights against self-incrimination.

In this instance, as the committee is aware, Mr. Borders has been convicted and sentenced with regard to the same subject matter which is here under consideration. As a result of the same subject matter which is here under consideration, Mr. Borders also had a fine of $25,000 levied against him, which he has paid. Mr. Borders as a result of the same subject matter which is here under consideration today also had a period of probation—parole, that is to say, imposed which he has successfully completed. Above and beyond that, with regard to the same subject matter which is here under consideration today, Mr. Borders served a period of incarceration for contempt.

It is Mr. Borders' position here today that he has completely and totally served his debt to society. When Mr. Borders previously refused to testify under the penalty or the jeopardy, if you will, of the contempt sanction, he indicated that it was not his desire to testify. At this point in time, we feel that it would be a denial of due process of law, and it would be most unusual and, in fact, cruel to now attempt to compel him to testify with regard to something for which he has already served a sentence for criminal contempt. I think that this would be a denial of due process, and it would also be in contravention of the constitutional prohibition against double jeopardy.

In addition, we would assert his rights under the Sixth, Eighth, and Fourteenth Amendments of the United States Constitution. I point out to the committee that the grant of immunity, the order which is currently under appeal, is limited in scope, as is the provision of the United States Code only to the right to self-incrimination. Mr. Borders' desire at this time to get on with his life without being further involved with regard to matters for which he has served his debt to society relates to matters beyond the scope merely of self-incrimination.

The **Chairman**. Mr. Borders, do I take it that your refusal is based, at least in part, on your asserting a privilege against self-incrimination?

Mr. **Borders**. Among other things, yes.

The **Chairman**. At this point, I have been instructed by the committee to indicate to you the order which was referred to by your attorney. It's an order that is in effect from the United States District Court for the District of Columbia, and it's one for which there is no stay. I believe there's a copy of it on the desk there in front of you.

Mr. **Rosier**. We have a copy of the order, and the order is limited in scope to the right—privilege based on the right, privilege against self-incrimination. It is our position that Mr. Borders is asserting at this point in time other provisions of the Constitution above and beyond the Fifth Amendment prohibition against self-incrimination.

The **Chairman**. Since I am directed to do so by the committee, let me go ahead and read this order that we're referring to here. Miscellaneous No. 89-129 is the case, and it's an order filed in the District Court June 27 of this year by Judge Oberdorfer.

It says,

> Upon consideration of the application by the Impeachment Trial Committee on the Articles against Judge Alcee L. Hastings, and upon determining that the procedural requirements set forth in 18 U.S.C. 6005 have been satisfied, it is this 27th day of June 1989 ordered that William A. Borders, Jr., may not refuse to testify and provide other information at proceedings of the Impeachment Trial Committee in the Articles against Judge Alcee L. Hastings on the basis of his privilege against self-incrimination. And it is further ordered that no testimony or other information compelled under this order or any information directly or indirectly derived from such testimony or other information may be used against him in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with this order.

You do have a copy of it there. Pursuant to the order, at this time I direct that you answer the questions that we put to you. And, again, let me just start and ask the question that I did before——

Mr. **Arrington**. Mr. Chairman, could I get clarification from you? The Chair said he does not have a right to appeal that particular order by a United States District Court judge to the Court of Appeals?

The **Chairman**. I did not say anything about a right to appeal. I said there's no order staying—there's no order at the District Court level or at the appellate level which stays the effect of the order I just read. It is in effect, and it continues to operate.

Mr. **Arrington**. Just for information purposes, I was on vacation last week, and a notice of appeal and all the confident documents will be filed tomorrow. It happened in short order. We have not been given the opportunity to do that. But for information purposes, I certainly wanted the Chair and the committee to know that we do, in fact, plan to file the appropriate documents with the appropriate court tomorrow.

The CHAIRMAN. We appreciate that information.

Let me once again put the question to you that I did before and get your response. Were you indicted in December 1981 on charges which included a conspiracy with Judge Hastings to corruptly solicit and accept money in return for a promise by Judge Hastings to reduce the sentence of Tom and Frank Romano from imprisonment to probation?

Mr. BORDERS. Mr. Chairman, on June 14, 1989, this committee filed an application for an order granting use immunity to me if I were called as a witness in this impeachment trial. On June 20, 1989, the United States District Court issued an order requiring the parties to appear at a hearing on the matter. The parties appeared before the Honorable Louis F. Oberdorfer, United States District Court judge on June 26, 1989, for hearing. At the hearing, both the parties were represented by counsel.

My counsel, Mr. Rosier, objected to the Trial Committee's request for a grant of use immunity on the procedural grounds that the application failed to comport with the requirements set forth in 18 U.S.C. 6005. He argued that 18 U.S.C. 6005(b)(3) and (c) had not been properly waived since waiver had not been effectuated by the Attorney General. The court agreed with Mr. Rosier's argument, and the committee was offered an opportunity to rectify the procedural defect by having a presidential appointee in the Justice Department waive the requirements of 18 U.S.C. 6005(b)(3) and (c). The hearing was adjourned.

On June 27, 1989, the committee filed documents with the District Court containing a letter from the Justice Department signed by Carol T. Crawford, Assistant Attorney General. This letter purported to exercise the Attorney General's sole prerogative of waiving 18 U.S.C. 6005(b)(3) and (c). By order of June 27, 1989, Judge Louis F. Oberdorfer granted the Trial Committee's request giving me use immunity as a potential witness in the impeachment trial. Whereupon, my attorneys, Marvin Arrington and Michael Rosier, filed a notice of appeal, and they will file for a stay of the Honorable Judge Louis F. Oberdorfer's order this week.

Now, Mr. Arrington was on vacation, and Mr. Rosier had other pressing matters. I was served with a subpoena in the latter part of the week at 6:50 in the morning. I got in touch with my lawyer later on. I respectfully request at this time that they be given time to do that. Therefore, I respectfully refuse to answer any and all questions based on the Fifth Amendment, the Sixth Amendment, the Eighth and Fourteenth Amendments.

I thank you for letting me read this statement, and I incorporate that answer and the statement in every answer that you direct of me, sir.

The CHAIRMAN. Thank you for that statement.

Let me be clear that I understand that all of the reasons for refusing to testify that you would intend to assert are those that you have stated and your attorney has stated in explanation here this morning. Or are there any other reasons in addition to those that you would like to assert?

Mr. BORDERS. None other than the Constitution.

The CHAIRMAN. All right. I think at this time we will take a short recess, the committee will, when it can deliberate on the objections that you have raised, and then we will be back in just a few moments—just a minute.

Let me defer to some of the other committee members who would also like to pose some questions before we recess. Senator Specter?

The VICE CHAIRMAN. Thank you very much, Mr. Chairman.

Mr. Borders, the statement was made that it would be unfair to compel you to answer questions at this stage since you've already been convicted of criminal contempt. Was that the statement which has been made on your behalf by your counsel?

Mr. ROSIER. I think the statement speaks for itself.

The VICE CHAIRMAN. That's what I understood you to say, but according to the—that's what I understood your counsel to say, that you have been convicted of criminal contempt. But based on the record which has been presented, according to my understanding, there has not been any conviction for criminal contempt. There has been a conviction for bribery in connection with your trial. But if there has been a conviction for criminal contempt, I would be interested to know about that, and I think this committee would be as well.

Mr. ROSIER. For the record, Mr. Borders served approximately 40 days as the result of a contempt citation from a Florida District Court judge while his conviction was on appeal. So he has, in fact, been convicted of contempt and has served time for contempt.

The VICE CHAIRMAN. Well, was that a criminal contempt or a civil contempt for refusing to answer questions?

Mr. ROSIER. Just one second.

[Pause.]

Mr. ROSIER. Inasmuch as there was a period of incarceration, I think that it is clear that this was a criminal contempt as distinguished from a civil contempt, which would have resulted in a fine.

The VICE CHAIRMAN. Well, isn't it true that he was incarcerated because he refused to answer questions before an investigating grand jury or before a grand jury which called him to testify?

Mr. ROSIER. That is correct.

The VICE CHAIRMAN. Well, I think that is a civil contempt, but let me move beyond that for the moment.

You have asserted that Judge Oberdorfer issued his order based only on a claim of privilege against self-incrimination and that you are now asserting a variety of other privileges under the United States Constitution. Is that correct?

Mr. ROSIER. That is correct. Judge Oberdorfer's order is based on 18 U.S.C. 6005 which limits, is limited in scope, as is his order, to a refusal to testify based on the right to be free from self-incrimination.

The VICE CHAIRMAN. Well, in the proceeding before Judge Oberdorfer, had there been a plea of privilege on these other constitutional grounds which you cite this morning?

Mr. ROSIER. The statute under which the immunity was sought is limited, as is the jurisdiction of the judge, to that specific issue.

The VICE CHAIRMAN. Well, I don't believe that that is so, but my question goes to the factual matter as to whether Mr. Borders asserted a refusal to testify in the proceedings before Judge Oberdorfer on the other constitutional bases which you assert here this morning.

Mr. Rosier. Those matters were not before the judge. The only matter before the judge was the interpretation of 18 U.S.C. 6005 which is, in fact, limited in scope to the right to be free from self-incrimination.

The Vice Chairman. Well, specifically, which amendments are you asserting this morning in your refusal to testify?

Mr. Rosier. The Eighth Amendment.

The Vice Chairman. What provision of it?

Mr. Rosier. Cruel and unusual punishment. The Fifth Amendment inasmuch as it relates to due process of law and double jeopardy.

One moment, please.

[Pause.]

Mr. Rosier. The Sixth Amendment with the right to effective representation of counsel. Inasmuch as Mr. Borders was compelled to testify early on Thursday of last week, counsel did not have time to consult nor to effect an appeal with regard to the subpoena or the stay. And the due process provisions contained in the Fourteenth Amendment.

The Vice Chairman. Well, aside from the question of an opportunity to consult with counsel between last Thursday morning and today, was there anything to preclude counsel from raising these other constitutional issues before Judge Oberdorfer?

Mr. Rosier. Only the fact that the provision of the Code is limited in scope, as is the jurisdiction of the United States District Court judge.

The Vice Chairman. Well, I don't think that's so, but that's a legal issue which the committee can consider. What we're interested in knowing is that you did not raise them and that there was nothing—or whether you felt there was anything to preclude you from raising them in addition to what you have already said.

When was Mr. Borders first served with the subpoena?

Mr. Rosier. That would have been July 19. Well, the subpoena is dated July 19. July 20 is the date that he was served.

The Vice Chairman. Has there been any effort made by Mr. Borders to consult with counsel since the immunity order was obtained on June 20? And I ask that question because Mr. Borders has been on notice since June 20, which is more than a month between that date and today, of the intention of this committee to call him, or at least the distinct likelihood that this committee might call him.

Mr. Rosier. One moment.

[Pause.]

Mr. Rosier. It was our feeling that we would be given an opportunity to exhaust our appellate rights, and until the subpoena was served, we were unaware of the fact that he was going to be called.

The Vice Chairman. Well, aside from the issue of exhausting your appellate rights, the question goes to whether there has been any effort made by Mr. Borders to consult with counsel on the merits of this case, at least from June 27 when the application for immunity was served. And I take it by your answer that there was no effort made to consult with counsel on the substance to be prepared to answer questions of this committee.

Mr. ARRINGTON. That is not true. I was on vacation in Seabrook, South Carolina, last week and received a call either on Wednesday or Thursday from Mr. Borders. At the time, I was not in. When I returned from doing what I was doing, my wife notified me that he, in fact, had called. At that particular time, I was out of the office, did not have any of the documents before me so I could read those particular documents and scrutinize those particular documents. I returned to my residence on Saturday of this week, and on Sunday he and I talked, yesterday, for about 20, 25 minutes on the telephone. He met me this morning at the DC airport.

We have not been given time to exhaust all of his appellate rights, but he did, in fact, contact me in Seabrook, South Carolina, either on Wednesday or Thursday of last week, and I would like for the record to reflect that. And, of course, the Chair's statement that he did not attempt to contact counsel is not a correct conclusion.

The VICE CHAIRMAN. Mr. Arrington—your name is Mr. Arrington?

Mr. ARRINGTON. Arrington.

The VICE CHAIRMAN. Yes. Mr. Arrington, the question that I asked—and I can appreciate the fact that you're on vacation and you did not get notice until last Wednesday, which would be the 16th of July, or Thursday the 17th of July. But my question is a little different than that, and I can understand the sequence between the 16th or 17th and today, which is the 24th. So my question goes to what effort was made, if any, from the time of June 27 when Mr. Borders was served with the notice that this committee was seeking an immunity order, because it seems to me—and I'm interested in your comment—that there has been a fair opportunity for Mr. Borders to know, at least since June 27, that this committee intended or probably intended to seek his testimony.

Mr. ARRINGTON. Mr. Specter——

The VICE CHAIRMAN. The order was sought on the 20th, and as I understand it, Mr. Borders was served—the request for immunity was obtained on the 20th, and there was service on the 27th.

The order was issued on the 27th. The application was made on the 20th so that there was notice to Mr. Borders some time between the 20th and the 27th, and the order was issued on the 27th.

Mr. ARRINGTON. Mr. Rosier appeared in court with Mr. Borders here in the District of Columbia, argued that particular point. The court ruled in his favor. Subsequently, the Attorney General or his staff made application for a second notice of immunity, and the judge issued without a hearing order. We now have filed a notice of appeal, and we plan to pursue that, as I said, tomorrow. Staff is now working on the brief, and we plan to exhaust his appellate rights under the law.

The VICE CHAIRMAN. Mr. Arrington, do you know of any authority for an appellate review of an order granting immunity?

Mr. ARRINGTON. You know, I would say that any order is appealable to the United States Court of Appeals. What we are saying is that the Attorney General himself did not sign this particular order. One of his designees who was unauthorized, and we are appealing that. We have a brief where we have quoted extensively case citations where the judge ruled with us in the first instance, and we are still contending the law in the cases cited in that particular brief is applicable to this particular situation. It has not changed.

If the Chair would bear with me one minute, please. Here is a brief that has Miscellaneous No. 89-190 LPF. It is entitled, and I quote, "Opposition of William A. Borders, Jr., to application for order immunizing testimony and other information." There is clear case citation for the position that we're going to take on the appeal in this particular matter. It was signed, and counsel was given a copy of it, of this particular brief. And, presumably, the Chair has a copy of this brief in its possession. If not, I will furnish the Chair with it. It has plenty of case citations substantiating the position that we are taking in this particular matter, case throughout: See In Re Sealed Case; See 791, Federal 2nd 179, 180 and 181, D.C. Circuit, 1986 case; also where cert. was denied in that particular case, In Re Sealed Case, 776 Fed. 2nd, 335, 1985, and see General P. A. Robinson, Criminal Law Division, 205 at 482-488, 1984.

Throughout this particular brief, we have cited case authority throughout, and I will be more than happy to furnish the Chair with a copy of this particular brief with the case citations therein.

The VICE CHAIRMAN. Mr. Arrington, we appreciate that and you, of course, have your legal position. When I asked you the question as to whether you had any authority that there could be an appeal taken from an immunity order, that question goes to a different context. As I understand the cases that you have cited, they relate to circumstances where there is a statutory requirement that the Attorney General or a specific designee sign on. The immunity statute, when immunity is sought by a congressional committee, requires a two-thirds vote of the committee and then requires a certification by the Attorney General that there is no objection.

My understanding of the law—and I don't dispute your right to have a different view—is that there's no requirement as to any specific designee of the Attorney General or any requirement that the Attorney General himself signs on. But when I asked you the question about whether you have any authority for an appeal on an order granting immunity, that question goes to a different point. That is an interlocutory order. And the first time that any appellate rights attach, as I understand the law, would be if, as, and when the witness is held in contempt. That is the event which triggers an appeal.

And when I ask you the question as to whether you know of any appellate authority for taking an appeal from the order granting immunity, that's my interest in that point, because I know of none and the committee counsel has researched it and we have found no authority that you can take an appeal at this time.

Mr. ARRINGTON. Mr. Chairman, I understand the distinction. We still maintain our position, and the cases are cited in the brief.

The VICE CHAIRMAN. I have one other question, and then I'll defer to my colleagues. That is, before we consider it, I think the committee would be interested to know—I certainly, at least, would be—whether there is a suggestion here that if Mr. Borders' appellate rights on this issue are exhausted and the issue is resolved legally that there is no right to refuse to testify before this committee, would Mr. Borders be willing to appear at that time and to testify?

Mr. **Arrington**. Mr. Co-chairman, that's a hypothetical question, and we're not in a position to answer that at this particular time. That is not helping, in fact, and we have not reached any conclusion to that.

The **Vice Chairman**. Well, you are entitled to your position, and I respect it, Mr. Arrington. I respect Mr. Borders' position. I do not think it is hypothetical. I think it is a very practical question, real question, which might motivate this committee in terms of our response. Because if Mr. Borders is saying or his counsel says today that if you have this chance to perfect your appellate remedies, whatever they may be—and we, of course, think you've had an opportunity, and we doubt that there are any. But you're entitled to your views as lawyers—that given that opportunity, he would come forward and testify, then we might respond in a different way.

Mr. **Arrington**. Mr. Chairman, I've already responded.

The **Vice Chairman**. OK. Thank you very much.

The **Chairman**. Are there other questions from the committee before we retire?

Senator **Leahy**. I have one.

The **Chairman**. Senator Leahy.

Senator **Leahy**. I am intrigued by your Eighth Amendment thing. Tell me again how this is cruel and unusual.

Mr. **Rosier**. Well, I think in this instance, Mr. Borders has previously served for contempt with regard to this same subject matter. It is certainly unusual, at the very least, that someone after having been incarcerated as a result of the same subject matter before another branch of Government, is now called before another branch of Government.

Senator **Leahy**. I don't know how you would call that unusual or cruel. Do you have any case law whatsoever that you would cite for that?

Mr. **Rosier**. Obviously——

Senator **Leahy**. I think the claim is unusual. I just don't know where it's cruel and unusual.

Mr. **Rosier**. Obviously, this is a case of first impression, Senator. I know of no case where anyone has been convicted and sentenced for contempt for a set of circumstances under one branch of Government and then has been called before another branch of Government——

Senator **Leahy**. Are you saying that you know of no cases where people have been convicted of, say, civil contempt and then brought in a criminal contempt matter, or may have been held in contempt, say, before a grand jury and then in a trial? Are you saying there's no such cases?

Mr. **Rosier**. I'm saying I feel that this specific factual situation is a case of first impression.

Senator **Leahy**. Are you saying that there has never—that you know of no cases where people have been held in contempt more than once on a similar set of circumstances, civil and criminal, for example?

Mr. **Rosier**. To my knowledge, no.

Senator **Leahy**. And what your client was held on before was civil contempt, right?

Mr. **Rosier**. That's correct.

Senator **Leahy**. And if it was civil contempt, how do you get a double jeopardy claim out of that?

Mr. **Rosier**. Due to the fact that he was incarcerated as a result of it.

Senator **Leahy**. But do you have double jeopardy in civil matters? I mean, I have been trying to think. I don't recall a case, I don't ever recall a case where double jeopardy applied to civil contempt. I just want to make sure I understand before we go back and argue your points. Do you have any case law you want to cite to us?

Mr. **Arrington**. Clearly, double jeopardy, Senator, applies to criminal matters and does not apply to civil proceedings, and we are not making that contention. And I don't want to make that——

Senator **Leahy**. I understood earlier that you were.

Mr. **Arrington**. Not from me, Senator.

Senator **Leahy**. Thank you. Thank you, Mr. Chairman.

Senator **Pryor**. Mr. Chairman.

The **Chairman**. Senator Pryor.

Senator **Pryor**. Yes. Thank you, Mr. Chairman.

Mr. Borders, I will not necessarily ask you to answer this question, but perhaps your attorneys could supply for me and the committee a question that I don't know the answer to, and perhaps it's in some of our voluminous material here.

I would like to know the amount of time served, that Mr. Borders served, for the bribery conviction and the dates of that incarceration.

Mr. **Borders**. Approximately a little over 33 months, Senator.

Senator **Pryor**. I wonder if we could be supplied with the dates of that incarceration.

Mr. **Borders**. I will see that they are submitted to you, Senator. I don't have them right now.

I went in May the—don't hold me exactly to this date.

Senator **Pryor**. Yes, sir, I understand.

Mr. **Borders**. May 25 or 29, 1983, I believe. I went to a halfway house in December of—thirty some months later I went to a halfway house, and I stayed in a halfway house 45 days.

Senator **Pryor**. All right. That's sufficient.

Mr. **Borders**. The balance of that time was served on parole, Senator.

Senator **Pryor**. Thank you very much.

The **Chairman**. Senator Rudman.

Senator **Rudman**. Mr. Borders, as you know, you are here pursuant to a subpoena issued after the court issued the order under our use immunity statute. I would like to ask your counsel if they could cite for us any case, State or Federal, that has been decided pursuant to a use immunity statute in which the subpoenaed witness was allowed not to testify pursuant to a constitutional claim under any provision of the United States Constitution or a State Constitution other than the Fifth Amendment?

[Pause.]

Mr. **Arrington**. Senator, that is not what we're pursuing. We do not have any case law. We are pursuing that they should have a right to appeal the decision entered by the United States District Court, and we want to file the appropriate documents and ask for a stay tomorrow so that that issue that was raised in those proceedings can be adjudicated at the appellate level.

Senator **Rudman**. You will agree that there is no stay now existing, and the court is aware of your intention to appeal?

Mr. **Arrington**. I will accept your representation. I have not had a chance to research that particular issue.

Senator **Rudman**. Well, there is no stay. And courts normally, Mr. Arrington, issue stays, do they not, if they think there is some basis for appeal?

Mr. **Arrington**. Well, we have not applied for a stay. We do, in fact, plan to apply tomorrow, given the time limitation and activities of last week. And as I've explained to the committee, we do, in fact, plan to apply tomorrow for a stay, but there is no stay as of today.

Senator **Rudman**. And if the stay is not issued, can we expect Mr. Borders to come here and testify forthrightly?

Mr. **Arrington**. Well, that's a hypothetical question, and we——

Senator **Rudman**. Well, it may not be hypothetical this week, so I expect you to be prepared to answer at that time.

Mr. **Arrington** [continuing]. Well, we have to respond at the appropriate time.

Senator **Rudman**. Mr. Borders, a direct question to you which does not get into the substance of why you're here today. Your counsel has said and you have said in your statement that you are refusing to testify today on a variety of legal grounds: Fifth, Sixth, Eighth and Fourteenth Amendments, plus the fact that you believe you have a right of appeal and you would like a chance to exercise it. Is that correct? Do I state your reasons accurately?

Mr. **Borders**. I believe that's what my statement said, Senator.

Senator **Rudman**. That is your complete statement on why you refuse to testify?

Mr. **Borders**. Yes, sir.

Senator **Rudman**. No other reasons?

Mr. **Borders**. Not at this time.

Senator **Rudman**. Right. So, in other words, you don't feel any personal jeopardy if you were forced to testify; is that correct?

Mr. **Borders**. I don't understand your question, Senator.

Senator **Rudman**. Well, you don't feel that your life would be in danger if you had to testify here? That's my question.

Mr. **Borders**. Senator, you ask me a question I can't answer.

Senator **Rudman**. Well, either you feel in danger or you don't, Mr. Borders. Just tell the committee. It's a simple question.

Mr. **Arrington**. Your Honor, we're not here to try to get into an argument with the committee. We respect this particular committee. We have no further comments at this particular time.

Senator **Rudman**. Well, I'd like Mr. Borders to answer that question. It's a very simple question. He can answer it yes or no.

Mr. **Borders**. I have no further comment, Senator.

Senator **Rudman**. Do you refuse to answer that question as well?

Mr. **Borders**. I have no further comment, Senator.

Senator RUDMAN. All right, fine. I think you've answered the question.

The CHAIRMAN. Are there other questions from the committee? Senator Lieberman?

Senator LIEBERMAN. Thank you, Mr. Chairman.

Mr. Borders, there has been some important and relevant dialogue here about the various legal rights involved. I want to just go at this in a somewhat different way and say to you that there was some deliberate discussion among the members of this committee about whether to call you or not to testify before these proceedings. And we were very much aware of your refusal to testify earlier in related cases to the same factual matter that's under consideration here.

I argued strenuously that we do call you, and I want you to understand that it went to the heart of what this proceeding is about, because although we have been arguing here this morning in terms of classic constitutional legal rights, this is a very different kind of legal proceeding, as I would guess you're aware. It is certainly different from any other legal proceeding that has come out of the same factual situation that you have been involved in.

We are here called upon, as members of the Senate, to exercise constitutional authority to determine a very serious question, which is whether the respondent, Judge Alcee Hastings, should remain as a member of the Federal bench. And in responsible dispatch of that constitutional authority, as well as, most important, in fairness to the respondent, Judge Hastings, we feel obliged to do whatever we can to gather information that will help us understand the truth here.

Now, I've sat here for two weeks. Both sides have presented arguments. This is a difficult judgment that we all have to make, and it seems to me that you are uniquely in a position to help us determine exactly what happened here. You, as you have said yourself or your counsel have said, have served your debt to society as you see it. You've served time for the bribery charge; you've served time for the earlier civil contempt. I accept that. What we're trying to do here is not to put you through more punishment. In fact, by the grant of use immunity, we're trying to say to you that if you will cooperate with this committee in our search for truth, there is no legal risk associated with the testimony that you will offer.

And so under all those circumstances, I want to ask you in a more non-legal way why you will not cooperate with this committee and assist it in dispatching its unique and very important constitutional responsibility.

[Pause.]

Mr. BORDERS. Senator, I understand everything you've said, and I would hope you would understand my position also.

Senator LIEBERMAN. You have nothing further to add?

Mr. BORDERS. No, sir.

Senator LIEBERMAN. I want you to know that I intend to do, as one member of this committee, whatever I can within the law, because of the seriousness of our responsibility, to compel your testimony before this committee on this matter.

Thank you, Mr. Chairman.

The CHAIRMAN. Are there other questions by members of the committee?

[No response.]

The CHAIRMAN. If not, we will take about a 10-minute recess. And if you would remain, we will at that time proceed further.

[Recess.]

APPEARANCE OF WILLIAM A. BORDERS, JR. (continued)

The CHAIRMAN. The committee is reconvened.

Mr. Borders, the committee has considered the objections you raised and determined that you do not have a legal right or basis to refuse to answer the committee's questions. And I would hereby direct you to answer the questions which you refuse to answer.

Let me state the initial question to you that I began with. Were you indicted in December 1981 on charges which included a conspiracy with Judge Hastings to corruptly solicit and accept money in return for a promise by Judge Hastings to reduce the sentence of Tom and Frank Romano from imprisonment to probation?

Mr. BORDERS. Mr. Chairman, I respectfully refuse to answer on the grounds that incorporate the grounds that I gave before in my written statement.

The CHAIRMAN. Were you convicted in Atlanta, Georgia, in March 1982 of that offense?

Mr. BORDERS. I respectfully refuse to answer and incorporate my statement to that answer, too, sir.

The CHAIRMAN. Did you in 1981 ever meet with an individual who represented himself to be Frank Romano? And did you believe that person was Frank Romano?

Mr. BORDERS. I respectfully refuse to answer and incorporate the same statement, sir.

The CHAIRMAN. And did you promise or state to that individual that in exchange for money paid to you the prison terms of Frank and Tom Romano would be reduced to probation?

Mr. BORDERS. I respectfully refuse to answer on the same grounds and incorporate my statement and answer.

The CHAIRMAN. Let me ask one final comprehensive question if I could at this time, Mr. Borders. The committee needs to know whether or not Judge Hastings and you planned together to solicit and accept money from a person who you thought was a defendant in a case before Judge Hastings in return for a modification of the sentence of the defendant and his brother. Among the particular facts that the Senate will need to determine are whether Judge Hastings and you arranged that he would eat at the Fontainebleau Hotel on September 16, 1981 as a sign that he was a participant in the bribery scheme, and whether or not actions that he took in reducing a forfeiture that had been imposed on the defendants, including the timing of his final order on the forfeiture were intended to be further signs that he was a participant in the bribery scheme. Additionally, the Senate will need to determine whether on October 5, 1981 when you and Judge Hastings spoke by telephone and referred to "letter for Hemp," whether you were genuinely discussing help for Hemphill Pride or acting in furtherance of this bribery scheme.

Mr. Borders, are you refusing to testify about each of those matters?

Mr. BORDERS. My answer would be the same to each one, incorporating my statement and answer to each one, sir.

The CHAIRMAN. Mr. Borders, you are not excused, but you may leave the room at this time. You do remain subject to the committee's subpoena. And it's the committee's desire to recall you before the committee at 4 o'clock this Thursday, and to advise you that in the interim between now and 4 o'clock this Thursday you can use the time to consult with your counsel to pursue the appeal you referred to, take any other legal action you deem appropriate. But you are free to leave the room at this time.

Mr. ARRINGTON. We can leave the building?

The CHAIRMAN. Yes, you may. Just before you do leave, Senator Specter wanted to make a statement.

The VICE CHAIRMAN. Thank you, Mr. Chairman.

I just wanted to make a comment in addition with respect to time to prepare on the substantive issues and on the legal matters. Our counsel will contact Mr. Arrington and Mr. Rosier in due course on moving through the legal underbrush on the matter. And I believe that there will be an effort made by committee counsel to move ahead in the Court of Appeals this afternoon so that any legal issues may be resolved. But as the chairman has already informed Mr. Borders and counsel, it is the committee's conclusion that there are no objections, no valid legal objections pending at this moment to Mr. Borders' answering the questions; that, so far as the committee is concerned, we view an obligation on the part of Mr. Borders at this time that there are not valid legal grounds, there is no stay, and there's no valid reason to refrain from asking questions because of an appeal having been filed.

I would further associate myself with what Senator Lieberman has said this morning. And Mr. Borders is a lawyer, and he is represented by competent counsel here today. But I think it worthwhile—and now I speak just for myself—to call the attention of Mr. Borders and his counsel to the range of remedies of civil contempt and criminal contempt and the possibility of multiple counts of criminal contempt on failing to answer individual questions, some legal issues as to what the import there is. But I think it is important—again, speaking only for myself—to put Mr. Borders and counsel on notice now so that if we come back here on Thursday or on some subsequent date, that at least that kind of notice has been given.

Thank you, Mr. Chairman.

The CHAIRMAN. At this time you are free to leave, Mr. Borders. Good-bye.

[Pause.]

The CHAIRMAN. Are the House managers prepared to proceed with the balance of their case at this time?

Mr. BRYANT. Yes, we are, Mr. Chairman. At this time, we would present to the committee the videotaped testimony of Monsignor Bryan Walsh.

The CHAIRMAN. All right. If the committee staff will set that up so the committee can view it.

[Pause.]

[The following is a transcript of a videotape.]

PRIOR TESTIOMONY OF MONSIGNOR BRYAN OLIVER WALSH BEFORE THE HOUSE SUBCOMMITTEE ON CRIMINAL JUSTICE

Mr. **Conyers**. Would you stand and be sworn? Raise your right hand. Do you solemnly swear that the testimony you will give will be the truth, the whole truth, and nothing but the truth?

Mr. **Walsh**. I do.

Mr. **Conyers**. We'll ask Special Counsel Baron to conduct the questioning.

Mr. **Baron**. Mr. Chairman, with your permission, I would like to defer to Assistant Special Counsel Patricia Wynn to question Mr. Walsh.

Mr. **Conyers**. All right.

Ms. **Wynn**. Good morning, sir.

Mr. **Walsh**. Good morning.

Ms. **Wynn**. Monsignor, would you please state your full name?

Mr. **Walsh**. My full name is Bryan Oliver Walsh.

Ms. **Wynn**. And where do you live?

Mr. **Walsh**. At 9401 Biscayne Boulevard, Miami Shores, Florida.

Ms. **Wynn**. And your occupation?

Mr. **Walsh**. I'm a priest at the Roman Catholic Archdiocese of Miami.

Ms. **Wynn**. Are you also the head of any civic or charitable organizations?

Mr. **Walsh**. I am the president of Catholic Community Services and Catholic Health and Rehabilitation Services.

Ms. **Wynn**. Are you familiar with an organization called M-M-A-P, or MMAP, the Metro Miami Action Plan?

Mr. **Walsh**. Yes, I am.

Ms. **Wynn**. Were you active in that organization in 1985?

Mr. **Walsh**. I was a member of the Executive Committee.

Ms. **Wynn**. Did you attend the MMAP meeting on September 6, 1985?

Mr. **Walsh**. Yes, I did.

Ms. **Wynn**. Do you recall at about what time you arrived at that meeting?

Mr. **Walsh**. I recall that I arrived early. I was not delayed by traffic. It was unusual. And I would think I arrived somewhere maybe about 8:15 or some time around there. All I know is that it was early.

Ms. **Wynn**. Do you know what time the meeting was scheduled to begin?

Mr. **Walsh**. I have an idea. It was either 8:30 or 9 o'clock. I really don't recall.

Ms. **Wynn**. But you arrived at around 8:15?

Mr. **Walsh**. Yes. I arrived early. I know that, yes.

Ms. **Wynn**. On that morning, Judge Hastings was to be the main speaker; is that correct?

Mr. **Walsh**. That is correct, yes.

Ms. **Wynn**. Did you know Judge Hastings at that time?

Mr. Walsh. I knew him by reputation, and I had, you know, seen him on a few occasions. But I was not closely acquainted with him or I never had had any real dealings with him.

Ms. Wynn. Have you met him personally or have you only seen him as a speaker?

Mr. Walsh. At the time, I do not recall ever having talked to him personally before that morning.

Ms. Wynn. But you did speak with him that morning?

Mr. Walsh. Yes. I was standing in the lobby area in front of the meeting room, and he came up to me and addressed me by name. In fact, the fact that he knew me by name kind of surprised me at the time, and that kind of stuck in my mind, that he knew me by name.

Ms. Wynn. Was this before or after the program had begun?

Mr. Walsh. It was before the program.

Ms. Wynn. And approximately how long after you arrived did he come up and speak with you?

Mr. Walsh. Not very long. Some minutes, maybe.

Ms. Wynn. Do you recall where you first saw him?

Mr. Walsh. As I say, I was standing in the area leading—between the elevators and the escalator, leading into the auditorium. And I saw him—I have a vague recollection that he came up the escalator, but that's vague, you know. From that direction he came.

Ms. Wynn. But, at any rate, you were outside of the meeting room?

Mr. Walsh. Oh, definitely outside the meeting room, yes.

Ms. Wynn. In the area where registration took place or——

Mr. Walsh. The general area, yes.

Ms. Wynn [continuing]. At the time that you saw him, did you see anyone else?

Mr. Walsh. Yes. Almost at the same time, it may have been just before or just afterwards, Mayor Clark came up to me. And whether I was talking to Hastings, Judge Hastings, or to Mayor Clark when the other came, I don't recall. But I do recall that the three of us were there together.

Ms. Wynn. And you do recall that they came up separately as opposed to——

Mr. Walsh. Oh, yes. They came up separately. Very definitely, they came from opposite directions, yes.

Ms. Wynn [continuing]. OK. When the greetings were exchanged in that meeting, did it appear to you that Judge Hastings and Mayor Clark were seeing each other for the first time that day, or that they had seen each other earlier?

Mr. Walsh. No. My impression was he greeted me and greeted the mayor, or the other way around. It was—we were all just—it was a casual meeting on the way to the main event.

Ms. Wynn. About how long would you say the three of you were together?

Mr. Walsh. A few minutes. We just explained—exchanged casual conversation.

Ms. Wynn. And do you recall how the three of you parted?

Mr. Walsh. More or less drifted apart. As I recall it, other people were coming around. The area was filling up, and we kind of drifted apart to say hello to other people.

Ms. **Wynn**. Do you recall whether Judge Hastings and Mayor Clark might have parted together or not?

Mr. **Walsh**. No, I have no recollection on that.

Ms. **Wynn**. Aside from the fact that Judge Hastings was the main speaker at this event, do you have—do you remember any of the details of the awards ceremony or the speech that occurred after the three of you saw each other?

Mr. **Walsh**. Not really. There was an awards ceremony, and the—but just at what point in the program it took place or, you know, this sort of thing, I was interested in hearing the judge talk. And other than that my presence was required, my main interest was, you know, in his talk.

Ms. **Wynn**. Do you recall approximately how long after the three of you were together that the program began?

Mr. **Walsh**. I would say it was some time, but, you know, whether it was 15 minutes or 20 minutes or a half an hour, I really could not recall. It's too far back.

Ms. **Wynn**. Do you remember anything about the actions of either Judge Hastings or Mayor Clark after your brief encounter with them?

Mr. **Walsh**. The only thing I recall is that the judge gave a very strong and, you know, entertaining presentation.

Ms. **Wynn**. I'd like to, if we could, try to narrow the time at which either Judge Hastings or Mayor Clark came up to you after you arrived. You said that you thought that you had arrived around 8:15 and that one of them came up with you some minutes after that. Would you say in your best estimate that it was before or after 8:30 that the first person came up to you?

Mr. **Walsh**. I really couldn't say. My memory is of, you know, being there early, and I certainly wasn't watching the clock. And my memory of it is that we were all there kind of on time and it was a very relaxed situation. And I really have no clear recall of the timing of the different events.

Ms. **Wynn**. OK. Thank you.

Mr. **Conyers**. Thank you very much, counsel.

Before we have questions, if there are any from the members, the Chair recognizes the gentleman from Oklahoma, Mr. Synar.

Mr. **Synar**. Thank you, Mr. Chairman.

I move that the subcommittee authorize the issuance of subpoenas for the following persons to appear at the hearings held in connection with the inquiry into the conduct of United States District Judge Alcee L. Hastings: Monsignor Bryan O. Walsh and Flauren Joyette Royals.

Mr. **Conyers**. The question, then, is on agreeing to the motion. A roll call vote is required, and I will ask the acting clerk to call the roll.

The **Clerk**. Mr. Edwards.

[No response.]

The **Clerk**. Mr. Synar.

Mr. **Synar**. Aye.

The **Clerk**. Mr. Boucher.

[No response.]

The **Clerk**. Mr. Bryant.

Mr. **Bryant**. Aye.

The Clerk. Mr. Gekas.

Mr. Gekas. Aye.

The Clerk. Mr. Fish.

Mr. Fish. Aye.

The Clerk. Mr. Swindall.

[No response.]

The Clerk. Mr. Conyers.

Mr. Conyers. Aye.

The Clerk. Five have voted in favor, none in opposition.

Mr. Conyers. The motion is unanimously agreed to, and the subpoenas will issue.

And now I would like to recognize Mr. Gekas for any questions.

Mr. Gekas. Yes. Monsignor, do you remember the awards ceremony at all, or is it just now a fleeting memory?

Mr. Walsh. It's a very fleeting memory. I, you know, wasn't paying a great deal of attention to it.

Mr. Gekas. There has been some testimony that Mayor Clark received one of those awards. Do you remember that specifically? You don't?

Mr. Walsh. No, not really.

Mr. Gekas. So you don't remember who was on the podium at the time of the awards ceremony?

Mr. Walsh. No.

Mr. Gekas. Do you remember where you were during the awards ceremony?

Mr. Walsh. I was sitting in one of the rows fairly close up front. To the best of my knowledge, I would say the left side of the speaker. Yes, the left side.

Mr. Gekas. Do you remember——

Mr. Walsh. In that area. I was up close.

Mr. Gekas. You do know that the awards—you do recall that the awards part of it occurred before the speech by Judge Hastings? Do you recall that for sure or not?

Mr. Walsh. No. I——

Mr. Gekas. No.

Mr. Walsh. I really wasn't—I really cannot recall that. That is to say, for sure. I just wasn't paying that much attention to it two-and-a-half years ago.

Mr. Gekas. And then, therefore, you cannot tell us once the awards ceremony began the relative positions or places where they might have been sitting, Judge Hastings or Mayor Clark?

Mr. Walsh. I have no idea.

Mr. Gekas. But the gist of your testimony is that after you arrived and before the awards ceremony together, you, Judge Hastings, and Mayor Clark were together, albeit it was a short time?

Mr. Walsh. Absolutely, yes.

Mr. Gekas. I have no further questions.

Mr. Conyers. Thank you.

Mr. Synar?

Mr. Synar. No questions, Mr. Chairman.

Mr. Conyers. Thank you.

Mr. Fish?

Mr. Fish. No questions.

Mr. Conyers. Then let me defer to Mr. Bryant.

Mr. Bryant. I have no questions.

Mr. Conyers. All right. Mr. Fish?

Mr. Fish. Monsignor, I gather that the speech by Judge Hastings started at 9 o'clock, and the meeting that you had with the mayor and Judge Hastings occurred some time between 8:15 and 8:30. Do you recall at the conclusion of this casual meeting with the two gentlemen, the greetings that were exchanged, that the two of them conversed outside of your hearing before leaving and entering the—leaving the reception area and going into the main room?

Mr. Walsh. I have no recollection of anything like that.

Mr. Fish. All right. Thank you, Mr. Chairman.

Mr. Conyers. Well, thank you very much.

Mr. Edwards, do you choose to question Monsignor Walsh?

Mr. Edwards. It wouldn't be a very intelligent question. No, thank you, Mr. Chairman. [Laughter.]

Mr. Conyers. All right. I didn't want to deny you this opportunity since he's come from afar.

Monsignor Walsh, we thank you very much, and we would now turn to Professor Anderson, counsel for Judge Hastings, for questions.

Mr. Anderson. Ms. Williams will examine Monsignor Walsh.

Mr. Conyers. All right. Ms. Williams.

Ms. Williams. Monsignor Walsh, do you recall during the brief encounter that you had with Judge Hastings and Mayor Clark seeing them shake hands?

Mr. Walsh. Yes, I'm sure we do—we did, yes.

Ms. Williams. Do you recall whether or not when they shook hands they went to the side and whether or not Steve Clark—Judge Hastings said anything into the ear of Steve Clark? Do you recall that?

Mr. Walsh. I have no recollection.

Ms. Williams. Would you have been able to see that if, in fact, it had occurred?

Mr. Walsh. I would——

Ms. Williams. In your presence.

Mr. Walsh. I would say I see no reason why not.

Ms. Williams. All right. And you don't recall having seen anything like that?

Mr. Walsh. I don't recall anything like that.

Ms. Williams. Then I have nothing further. Thank you.

Mr. Conyers. Well, yes, Mr. Bryant?

Mr. Bryant. May I ask a question?

Mr. Conyers. Of course.

Mr. Bryant. Monsignor, you have used the term several times, "I have no recollection." Am I right in taking that to mean that you just don't remember either way?

Mr. Walsh. That would be correct, yes. I have no recollection; I have no knowledge of what might have taken place or did take place.

Mr. Bryant. OK. Thank you. I have no other questions.

Mr. Conyers. All right. Thank you very much, Monsignor Walsh. We are greatly pleased that you could come forward for your testimony. You will be excused at this point.

Mr. Walsh. Thank you.

[The videotape deposition was concluded.]

The CHAIRMAN. Representative Bryant, did you have an additional witness to call?

Mr. BRYANT. At this time, the House calls Christopher Mazzella.

The CHAIRMAN. Mr. Mazzella, would you raise your right hand? Do you, Christopher Mazzella, swear and affirm that the evidence you shall give in the case now pending between the United States and Judge Alcee L. Hastings shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MAZZELLA. I do.

The CHAIRMAN. Please be seated.

Mr. MAZZELLA. Thank you.

Mr. BRYANT. Could you state your name for the record?

TESTIMONY OF CHRISTOPHER R. MAZZELLA

DIRECT EXAMINATION

Mr. MAZZELLA. My name is Christopher R. Mazzella.

Mr. BRYANT. And, Mr. Mazzella, what is your occupation?

Mr. MAZZELLA. I'm a supervisory special agent with the FBI.

Mr. BRYANT. And would you tell us of your background?

Mr. MAZZELLA. Yes. I have 25 years in as an agent with the FBI. I'm also a member of the Florida Bar Association, New Jersey and Missouri Bar Associations.

Mr. BRYANT. You're an attorney, that is?

Mr. MAZZELLA. Yes, I am.

Mr. BRYANT. Where are you assigned?

Mr. MAZZELLA. Currently, I'm assigned to the Miami Division.

Mr. BRYANT. How long have you been a special agent with the FBI in the Miami field office?

Mr. MAZZELLA. Since approximately 1981.

Mr. BRYANT. In 1984, what was your particular assignment?

Mr. MAZZELLA. In 1984, I was designated the supervisor of a new squad to handle public corruption and labor racketeering.

Mr. BRYANT. And how long did you hold that position?

Mr. MAZZELLA. For approximately four years.

Mr. BRYANT. Turning your attention back to 1984, were you the supervising agent for the FBI's investigation of corruption within Local 192 of the International Longshoremen's Association, the Hialeah zoning process, and police corruption in North Bay Village?

Mr. MAZZELLA. Yes, I was.

Mr. BRYANT. How were the three investigations linked?

Mr. MAZZELLA. Well, basically, we had common subjects and informants and cooperating witnesses throughout those three investigations.

Mr. BRYANT. And was it in connection with those investigations that the FBI in conjunction with the United States Attorney's Office in Miami on July 15, 1985, requested and received from Alcee Hastings, Judge Alcee Hastings, an authorization for a wiretap?

Mr. MAZZELLA. Yes. That's correct.

Mr. BRYANT. Did there come a time in the course of these investigations that you had reason to believe there had been a leak?

Mr. MAZZELLA. Yes, I did.

Mr. BRYANT. How did that come to your attention?

Mr. MAZZELLA. On September 9, 1985, I was informed by Special Agent Geoffrey Santini that our wiretap had disclosed the possibility that Judge Alcee Hastings had leaked confidential information to Mayor Clark.

Mr. BRYANT. What role did you play with respect to the investigation of the leak that became known on September 9?

Mr. MAZZELLA. I supervised it.

Mr. BRYANT. Now, that left you in the position, did it not, of supervising both the—rather, four investigations now: the Hialeah zoning case, the police corruption case in North Bay Village, and a case with regard to the leak itself; is that correct?

Mr. MAZZELLA. Yes, and the ILA investigation. That's correct.

Mr. BRYANT. Excuse me, and the Longshoremen's Association investigation.

What were the first steps you took to investigate this matter; that is, the matter of the leak?

Mr. MAZZELLA. It was important immediately to determine the full extent of what was recorded on the wiretap, so I instructed that the actual—a recording of the actual conversations be brought into the office so that I could listen to them. And upon listening to the recordings, I felt that there was a significant problem involved, and I instructed Special Agent Geoffrey Santini to reach out to an informant we were utilizing by the name of Johnny Rivero and attempt to determine whether there would be any possibility that we could corroborate this information independently from the actual wiretap.

Mr. BRYANT. Did Rivero make that attempt?

Mr. MAZZELLA. Yes, he did.

Mr. BRYANT. What were the results?

Mr. MAZZELLA. He was able to finally contact an individual by the name of Kevin Gordon, one of the targets of the wiretap, and Kevin Gordon did confirm to Johnny Rivero that Mayor Clark had informed him at an earlier meeting that Judge Alcee Hastings had warned Mayor Clark about the wiretap—about the investigation, I should say.

Mr. BRYANT. Now, when did Rivero, the undercover informant, report in to you with regard to this?

Mr. MAZZELLA. It was on the afternoon of September 10, 1985.

Mr. BRYANT. The same day that he actually made that contact?

Mr. MAZZELLA. Yes, that's correct.

Mr. BRYANT. All right. And what was his manner when he reported it back to you?

Mr. MAZZELLA. He was extremely nervous, extremely agitated, and expressed fear for his safety.

Mr. BRYANT. At the time you became aware of the leak, what was the status of your attempts to get Johnny Rivero admitted into Local 192 as part of your probe into labor corruption?

Mr. MAZZELLA. At that particular point, our efforts had been somewhat negated by members of the ILA itself who did not trust Johnny Rivero. We had made numerous attempts through intermediaries to acquire membership for him, however unsuccessfully up to that particular point.

Mr. **Bryant**. Had you made an effort to take another step with regard to getting him admitted?

Mr. **Mazzella**. Yes, and a very dangerous step, I might add.

Mr. **Bryant**. What was that step?

Mr. **Mazzella**. We had reached out to another informant who had contacts with high level officials in the ILA. We asked this particular informant to please vouch for Johnny Rivero so that he could gain admission into the union. After considerable negotiation with this particular person, the individual agreed to vouch for our informant.

Mr. **Bryant**. Now, at the time you learned of the leak, what was happening with respect to this effort to assure Rivero's credibility with the union officials?

Mr. **Mazzella**. The individual I was just referring to was going to make contact with union officials on or about the time of the leak, that specific date.

Mr. **Bryant**. Did you inform this new individual who was going to try to get Rivero into the union of the development of the leak?

Mr. **Mazzella**. Yes. We felt it was extremely important to certainly discuss the incident with this person. We did contact the individual, both myself and Special Agent Santini. We explained to him the possibility that the investigation had been, in fact, compromised and that the targets of the investigation were known—or had been advised of the investigation. We gave him the option of going forward with the vouching.

Mr. **Bryant**. Well, in view of the fact that he had been informed of the possibility that his situation might be compromised, what decision did he make?

Mr. **Mazzella**. He decided that he wanted no part of the effort.

Mr. **Bryant**. What then happened to the undercover operation at the ILA that was focusing on getting Rivero into the union?

Mr. **Mazzella**. We concluded any attempt to gain admission for Mr. Rivero, and we decided to totally terminate the undercover efforts and leave unaddressed the numerous allegations that had arisen during the course of our investigation.

Mr. **Bryant**. Why did you have to terminate it?

Mr. **Mazzella**. Well, at the point of the leak, we did not know exactly what the extent of the disclosures were to potential targets or subjects of that investigation. Therefore, placing Johnny Rivero or any other undercover agent in a precarious position of having to infiltrate an organization that is already known for its violence could only cause possible serious danger to Mr. Rivero.

Mr. **Bryant**. Agent Mazzella, how long had you been working on this undercover operation?

Mr. **Mazzella**. We initially started our probe of the ILA in September 1984. The undercover efforts were really generated in March 1985. So I would say in all the investigation had been ongoing for almost a year.

Mr. **Bryant**. Let me turn to another investigation. Just prior to the time of your knowledge of the leak, how was the investigation into zoning corruption in Hialeah proceeding?

Mr. **Mazzella**. Exceptionally well. We had finally gotten a business enterprise established, the Photon scenario—I presume you've all heard of it—and the business had been established. We went through tremendous efforts in getting the proprietor of that business to agree with allowing us to use his business entity. We had successfully infiltrated an FBI undercover agent into the business community, and our FBI informant, Johnny Rivero, was making significant contacts with Waxy Gordon relative to corruption in Hialeah.

Mr. BRYANT. Now, after September 6, 1985, when the leak occurred, did anything change with regard to the Hialeah probe?

Mr. MAZZELLA. Absolutely. The case almost took a 180-degree turn. We suddenly had Waxy Gordon very, very suspicious of our FBI undercover agent and our informant. In fact, in conversations that we later learned of, Rivero specifically indicated that he did not trust Gino, the FBI undercover agent. He felt that he was somehow involved in law enforcement and would not want to do any further business with him.

Mr. BRYANT. Prior to this time, had Waxy—that is, Kevin Gordon—indicated that he was prepared to facilitate bribe payments to assist Gino in getting his operation set up in Hialeah?

Mr. MAZZELLA. He not only indicated his willingness but outlined specific plans to carry forward that corrupt activity.

Mr. BRYANT. In view of the negative turn of events, what did you decide to do with respect to the Hialeah corruption investigation?

Mr. MAZZELLA. Well, again, effectively the disclosure to Waxy Gordon in effect left us no alternative but to close that operation down as well, since he was the central figure and the intermediary that would lead us into making payoffs. The fact that he knew we were investigating this matter would leave us no alternative but to close it down.

Mr. BRYANT. After you shut it down, at the time you shut it down, how long had the FBI been working on this investigation?

Mr. MAZZELLA. Almost eight or nine solid months.

Mr. BRYANT. Now, what about the third area we've talked about, the corruption of the North Bay Village policemen and drug trafficking? What did you have to do with respect to that part of the probe after you learned of the leak of the wiretap?

Mr. MAZZELLA. Well, we had to move it along a lot quicker than we wanted to because we had received extensive information of police corruption, not only in North Bay Village but in other sectors. We wanted to use the undercover scenario in that particular case to expand the investigation, but because of the disclosure and the need to press on with the leak investigation, we decided at an inopportune moment, as it was, we would terminate the investigation.

Mr. BRYANT. Well, when you terminated it, were you able to achieve convictions?

Mr. MAZZELLA. Yes, we did.

Mr. BRYANT. But you were limited in some fashion with regard to going further?

Mr. MAZZELLA. That is correct. We made our arrests on February 27, 1986, and we based that particular action on the fact that we would have to conduct overt interviews the very next day based upon the leak investigation.

Mr. Bryant. Agent Mazzella, can you estimate for the committee the resources that were expended in connection with the wiretap that had been authorized by Judge Hastings?

Mr. Mazzella. Well, in addition to the thousands and thousands of hours of agent personnel devoted to investigating these matters, the actual wiretap itself, the technical end of this thing, cost the Government in excess of $300,000. Again, that is not to mention the agent manpower that was used relative to doing surveillances, conducting interviews, and other logistic type investigative inquiries.

Mr. Bryant. What about the non-monetary losses resulting from this?

Mr. Mazzella. Those are difficult to judge but we think are quite staggering in the sense that witnesses now are aware of the fact that a very confidential investigation was disclosed, the fact that targets can learn of the existence of investigations of this nature, the fact that we had to have one of our informants back away from vouching, again, in our view, had a very negative impact on the possibility of developing future informants and cooperating witnesses.

Mr. Bryant. Returning now to the responsibility you had to investigate the leak itself, after Rivero corroborated the information you had intercepted on September 9, and after you had made decisions as to what course to follow with regard to the three undercover investigations, what steps did you begin to take to pursue the investigation of the leak itself?

Mr. Mazzella. Well, obviously, the only thing we had up to that point was comments that Waxy Gordon had made over a telephone and comments that he made directly to the informant, Johnny Rivero. The logical step at that point would be to try to corroborate that information through contacts with other principal parties who might have direct knowledge of the disclosure, such as Mayor Clark and Peter Ferguson.

We decided, obviously, that direct interviews of these individuals might not prove successful. They could possibly deny the situation or give us a statement or false interview so that we would never be able to go back and corroborate it. So at that point, we decided to utilize our informant, Johnny Rivero, to seek making recorded conversations with Mayor Clark and see if we could entertain Mayor Clark or any other individual in conversations that would corroborate the initial information.

Mr. Bryant. Did that work?

Mr. Mazzella. Well, it almost worked. Johnny Rivero did make an attempt to speak with Mayor Clark on October 11, 1985. However, as he was about to approach the mayor at the Miami Outboard Club, two individuals stopped him in his tracks, pretty much told him to put his cards on the table, removed him from the restaurant, and brought him to another section of the restaurant where they confronted him.

Mr. Bryant. What was your next attempt to get Mayor Clark on tape talking about the leak?

Mr. Mazzella. Well, we obviously recognized at that point that Johnny Rivero was not going to be the person to do it. He was in all likelihood, and obviously at that point, under heavy suspicion.

So we felt that the only other way to do it would be to get somebody close to the mayor and the people that he was—that had direct knowledge of this who these individuals could trust. The only person out there was Waxy Gordon.

We decided at that point to seek his cooperation to determine whether he would wear a body recorder and thereafter try to record conversations with the principals involved.

Mr. BRYANT. Would you explain to the committee how you proceeded with regard to Kevin Waxy Gordon?

Mr. MAZZELLA. Well, once again, we were concerned about approaching Waxy Gordon directly. We were concerned that he would probably deny the allegations or the assertions, and once that's done, we would have no way to check his story out or to develop further cooperation. What we needed to do was determine whether there was some way we could induce him to cooperate.

In the months that preceded the leak, Waxy Gordon had indicated on several occasions his willingness to sell narcotics to our informant, or to any other individual who might want to purchase narcotics. We had always intended to pursue that area of the investigation, but we felt that perhaps this would be a way to solidify his cooperation. So we advanced that portion of the investigation, and we proceeded with a narcotics and drug investigation against Waxy Gordon.

Mr. BRYANT. Did Johnny Rivero, in fact, buy drugs from Waxy Gordon?

Mr. MAZZELLA. Yes, he did.

Mr. BRYANT. All right. When did this take place?

Mr. MAZZELLA. The actual drug deals occurred some time after the leak and prior to November 18.

Mr. BRYANT. Now, why did it take from September 9, when you first learned of the leak until November 18, to confront Gordon; that is, to consummate the drug sale and then confront him?

Mr. MAZZELLA. Well, drug sales are difficult to consummate. There's always built-in delays. Gordon had sources for the drugs which he reached out for. On some occasions he couldn't reach them; on other occasions it was difficult to acquire the actual drug proceeds. So it just took time, and it's a natural and an ordinary thing that normally happens in drug deals.

Mr. BRYANT. When you confronted Gordon, did you see his cooperation?

Mr. MAZZELLA. Yes, we did.

Mr. BRYANT. Did you obtain it?

Mr. MAZZELLA. Yes.

Mr. BRYANT. Did it take you very long?

Mr. MAZZELLA. Not very long.

Mr. BRYANT. What was the first thing you did when Waxy agreed to cooperate with you?

Mr. MAZZELLA. Well, the first thing we did was debriefed him. That occurred on November 18, 1985. He submitted to an interview. We interviewed him thoroughly, and thereafter we explained to him that if he was going to cooperate, he would have to cooperate fully, not only in this particular investigation but in any matter in which he was involved.

Mr. **Bryant**. Now, presumably, you asked him to confirm or to deny or to give you information about the central part of your inquiry, which is whether or not Judge Hastings had told Mayor Clark what he is alleged to have told him?

Mr. **Mazzella**. That's correct.

Mr. **Bryant**. Did he corroborate it?

Mr. **Mazzella**. Yes, he did.

Mr. **Bryant**. All right. Did anything that he told you cause you to believe that the focus of your investigation into the source of the leak ought to change or expand or in any way be different?

Mr. **Mazzella**. Not at all. In fact, whatever he told us confirmed the focus of the investigation as we had known it from the wiretaps.

Mr. **Bryant**. Now, did you ask Kevin Waxy Gordon about actions he had taken after he had received the information from Mayor Clark?

Mr. **Mazzella**. Yes, we certainly did.

Mr. **Bryant**. And what did he tell you about that?

Mr. **Mazzella**. Well, he told us that he was suspicious of our FBI undercover agent, Gino, and that he went up to the business that Gino had portrayed as his local office, that he went up to this particular business and checked it out. In fact, it's quite interesting that in one of the Title III overhears we had right after the September 6, meeting, Waxy Gordon was in conversation with an individual and explained that the meeting with Mayor Clark had gone bad, and that the very next day, the Saturday, was also a very bad day. We asked Waxy about that, and he said that was the day he went up and checked Gino's business out, and he was very much concerned and upset about what he saw.

Mr. **Bryant**. After debriefing Waxy Gordon, what was your next step in the investigation of the leak?

Mr. **Mazzella**. Well, that's when we decided that we needed Waxy Gordon to approach the individuals who had direct knowledge. We, therefore, informed Waxy Gordon that he would have to wear a body recorder, which he consented to do, and we asked him to entertain both Peter Ferguson and Mayor Clark in conversations.

Mr. **Bryant**. Who were the persons who were privy to the conversation between Gordon, Waxy Gordon and the mayor on September 6?

Mr. **Mazzella**. Peter Ferguson.

Mr. **Bryant**. OK. Now, was Gordon able to record a conversation with Ferguson?

Mr. **Mazzella**. Yes, he was.

Mr. **Bryant**. When and where did this take place?

Mr. **Mazzella**. The conversation occurred on December 18, 1985 at the Miami Outboard Club, specifically in a restroom facility at that restaurant.

Mr. **Bryant**. I'm going to show you Exhibit 193A and ask you to identify this exhibit.

Can you identify that exhibit?

Mr. **Mazzella**. Yes, I can.

Mr. **Bryant**. And what is it?

Mr. MAZZELLA. It is a duplicate tape recording of an original NAGRA recording which occurred between Waxy Gordon and Peter Ferguson.

Mr. BRYANT. Now, Agent Mazzella, is this a lengthy tape recording?

Mr. MAZZELLA. Yes, it's quite lengthy.

Mr. BRYANT. How long is it?

Mr. MAZZELLA. About two hours long.

Mr. BRYANT. Have you listened to the entire tape?

Mr. MAZZELLA. Yes, I have.

Mr. BRYANT. Did Mr. Gordon and Mr. Ferguson discuss matters relating to the September 6 leak on more than one occasion during the entirety of this tape recording?

Mr. MAZZELLA. No. The conversation is specific and only on one occasion, on this tape.

Mr. BRYANT. I'd like to show you House Exhibit 193B and ask you to identify it.

Mr. MAZZELLA. I can recognize this. I recognize it.

Mr. BRYANT. What is it?

Mr. MAZZELLA. It's a transcript of the conversation that occurred between Kevin Waxy Gordon and Peter Ferguson on Wednesday, December 18, 1985.

Mr. BRYANT. And who prepared this transcript?

Mr. MAZZELLA. Special Agent Nottoli of the FBI in Miami.

Mr. BRYANT. Now, based upon your having listened to the entire tape, I'd like to ask you if this transcript is an accurate recitation of the one occasion during the tape recording when the parties discussed anything having to do with matters relating to the leak of September 6, 1985?

Mr. MAZZELLA. It is an accurate recitation.

Mr. BRYANT. Mr. Chairman, I would now ask that House Exhibits 193A and 193B be admitted into evidence?

The CHAIRMAN. Is there objection?

Mr. ANDERSON. Mr. Chairman, I think at least the segment of the tape to which the transcript relates should be played so that it is part of the record. I don't ask that you play the entire two hours.

The CHAIRMAN. How long is the segment that relates to the transcript?

Mr. BRYANT. Very short, and that was my next request, to be allowed to play it.

The CHAIRMAN. That's fine. Why don't we admit both exhibits and play the portion of the tape that's relevant?

[The documents referred to were marked House Exhibit Nos. 193A and 193B and were received in evidence.]

[A tape recording was played at this point.]

[illegible]
Dec. 1st, 1985
Conversation

EMM
JMCamp

DEAR ERIC & JOHN,

ENCLOSED IS A COPY OF THE CONVERSATION BETWEEN KEVIN GORDON AND PETE FERGUSON ON 12/18/85.

I ALSO AM ENCLOSING A ROUGH TRANSCRIPT OF THE MOST PERTINENT PART OF THE CONVERSATION. THE TAPE IS SET AT THE STOP OF WHERE THE TRANSCRIPT BEINGS. IT IS ON SIDE B OF THE TAPE.

WHEN FERGUSON GETS TO THE REAL GOOD PARTS HIS VOICE GETS VERY LOW AND IT"S HARD TO UNDERSTAND.

I WILL KEEP YOU BOTH INFORMED.

HAVE A MERRY CHRISTMAS AND A HAPPY NEW YEAR.

Gary Mottola

RECEIVED
DEC [illegible] 1985
Public Integrity Section

United States Senate
EVIDENTIARY HEARINGS
HOUSE MANAGERS' EXHIBIT 193B

EXHIBIT
193b
HOUSE

REVEIW OF NAGRA RECORDING BETWEEN KEVIN "WAXY" GORDON AND PETE FERGUSON ON WEDNESDAY 12/18/85 IN THE RESTROOM OF MIAMI OUTBOARD CLUB

K.G. Hey Pete

P.F. I don't believe that fuckin guy!

K.G. I can't understand him

P.F. You know I never trusted that fuckin guy from the start, and I'm going to tell you why.

K.G. Yeah.

P.F. The guy with the ....(U.I.) Clark said to me, he says no I think that guy is a fuckin load of trouble. Remember when he asks you one time.

K.G. Yeah.

P.F. You know.. (U.I.) I could never figure out what he did. Because he was always here and whenever he was from he was very vague. Like he was from Alabama or some fuckin thing. And then the guy said Chicago. He was from Chicago. Did you ever hear what he was talking at the bar?

K.G. I never paid that much attention.

P.F. He sounded like he was a DEA Agent.

K.G. What

P.F. (U.I.)

K.G. What the Hell would he be hanging around me for.

P.F. How in the Hell else could he get in here. You see what I mean.. That's his main goal you she what I mean.

K.G. I see!

P.F. (U.I.) You know let's face it, if somebody is introduced by you that's pretty good fuckin entree, you know what I mean..

K.G. Ah, let me see how I met him. He came well introduced to me from an old friend out of New York. And ah, I knew him, I was having drinks with him up around the Tin Lizzie and that area for a humber of months. And he had this friend from Houston; who I don't know if you seen this thing on T.V. It was on USA Today also in the newspaper--it was called Photon.. It's one of those electronic type of things you--what the hell is that?

P.F. My (U.I.)

K.G. Well anyways, that's what he was looking for a site down here and what have you. And the guy, I just did it on a flat fee as a

P.F. Did you get paid?

K.G. No, I didn't get paid, because all of sudden he got all uptight and he walked away from the deal and

P.F. Let me ask you something. I don't think the cocksucker. I don't understand the guy's story. But you just stop and think if I could hear mind.

K.G. Okay, alright.

P.F. If I could hear mine. You try to put together his conversation, okay. Now he's from Alabama, and he is talking with a guy in here you know. He use to be a pretty wacko guy.

K.G. Yeah?

P.F. And ah, In Alabama, he goes here, he goes there and the next fuckin thing you know in fuckin Texas, than he's in fuckin ah, Tennessee, then he is in fuckin New York. You know I mean, in other words, the guy never had a story, you know.

K.G. Uh-hum.

P.G Uh-hum that's good. Because it doesn't ...(U.I.) But you ask him something the gooffy fuckin question, you know to the Mayor ....(U.I.) DEA Agent. (U.I.) xxx He talks to the two of us you leave. He buys the two of us a drink and talk to us.

K.G. Do you think that could have been the hit on me with the other guy-Hastings.

P.F. That's the whole thing right there.

K.G. Holy Christ. That could of been it.

P.F. Could of been it.

K.G. Oh, my God

P.F. Ah, see what I mean

K.G. Yeah

P.F. This fuckin guy is really ...(U.I.)

UNK. MALE Hey what's going on
(U.I.)

UNK. MALE Hey there you go

K.G. Okay, oh by the way. Yeah, yeah, I"'m going to run now. I got to pick up my daughter.. Say hello to Steve for me and thank him for the information.

P.F. Yeah

K.G. Thank God, Huh.

P.F. That what were thinking that could only go back into this now you stop and think.

K.G. Now it comes together, yeah okay Pete.

P.F. See you Pal

Mr. **Bryant**. Agent Mazzella, there are references by Ferguson in this conversation to the guy who said he was from Alabama, then he said he was from Chicago and so forth. Based on your knowledge of the underlying undercover case, what was the basis—that is to say, the underlying undercover case that was the basis for the wiretap, to whom was Ferguson referring when he made those remarks?

Mr. **Mazzella**. It's quite obvious he's referring to Johnny Rivero, the FBI informant.

Mr. **Bryant**. So what was he indicating, Ferguson, with regard to Rivero?

Mr. **Mazzella**. He's indicating that Johnny Rivero could not be trusted and is an arm of law enforcement.

Mr. **Bryant**. And the reference that Ferguson makes, he had this friend from Houston, what does that mean?

Mr. **Mazzella**. In that context, he's talking about Gino, the FBI undercover agent.

Mr. **Bryant**. That's the one that was trying to set up the Photon operation front at Hialeah?

Mr. **Mazzella**. That's right. Gino was the individual who was acting as an intermediary for interests in that city.

Mr. **Bryant**. OK. Does the conversation also make a reference to a leak by Judge Hastings?

Mr. **Mazzella**. Yes, it does.

Mr. **Bryant**. Would you read from the transcript?

Mr. **Mazzella**. Yes. The conversation that specifically mentions the leak occurs after Kevin Gordon is asking Peter Ferguson whether that could have been the source of the information pertaining to the DEA agent. And Peter Ferguson at that—and Kevin Gordon asks at that point, "Do you think that could have been the hit on me with the other guy Hastings?" Peter Ferguson responds, "That's the whole thing right there."

Mr. **Bryant**. And was anything said during this conversation of December 18, 1985, that led you to believe that the focus of the leak investigation ought to be different, ought to change?

Mr. **Mazzella**. No, absolutely not.

Mr. **Bryant**. Now, was Waxy Gordon ever able to record a conversation with Mayor Clark?

Mr. **Mazzella**. Yes, he did.

Mr. **Bryant**. About the mayor's conversation with Judge Hastings?

Mr. **Mazzella**. Yes, he did.

Mr. **Bryant**. All right. And was that conversation recorded?

Mr. **Mazzella**. Yes, it was.

Mr. **Bryant**. That's the one this committee's already heard, I believe.

Mr. **Mazzella**. Yes, I believe that conversation occurred on January 17, 1986.

Mr. **Bryant**. Now, did the taped conversation of January 17, 1986, which this committee has already heard between Mayor Clark and Waxy Gordon cause you to change or expand the focus of your investigation into this leak?

Mr. **Mazzella**. No. It was further corroboration of what we had already determined and heard.

Mr. BRYANT. Now, following January 17, 1986, the recording of that date of Mayor Clark by Waxy Gordon, what did you plan to do next with your investigation?

Mr. MAZZELLA. Well, what we wanted to do was to have Waxy Gordon conduct further body recording actions with principals in this case to see if we could flush out further whether any further information was disclosed to Mayor Clark. Unfortunately, on February 20, 1986, Waxy Gordon passed away.

Mr. BRYANT. What was the cause of his death?

Mr. MAZZELLA. I believe he had a massive heart attack.

Mr. BRYANT. Had the North Bay Village police corruption case gone as far as you wanted it to go at that point?

Mr. MAZZELLA. Well, at that point, it was still progressing. We thought we would be able to expand beyond where we were, but we had to make a decision to bring it down.

Mr. BRYANT. With respect to your interviews in the leak investigation, when were those interviews and whom did you interview?

Mr. MAZZELLA. We interviewed several individuals on February 28, 1986, which was the day after the North Bay Village police arrests.

Mr. BRYANT. In other words, you went overt; is that correct?

Mr. MAZZELLA. Yes, that's correct. We went overt.

Mr. BRYANT. All right.

Mr. MAZZELLA. Again, the reason was that Waxy Gordon was dead, and we now felt that it was incumbent upon us to make the next approach, and that would be to seek the cooperation of Mayor Clark.

Mr. BRYANT. First, tell the committee who you interviewed the day after the police investigation ended.

Mr. MAZZELLA. We interviewed Mayor Clark, Richard Bonehill, Peter Ferguson who is director of fiscal operations at the Port of Miami and the former campaign manager of Mayor Clark's, and Stu Morrison who is a close friend and associate of the mayor's.

Mr. BRYANT. Were they interviewed simultaneously?

Mr. MAZZELLA. Yes. The interviews were conducted simultaneously.

Mr. BRYANT. Did you learn anything in these interviews which caused you to change or to expand the focus of your investigation of the leak?

Mr. MAZZELLA. No. Again, the information corroborated even stronger the indications that we had received in our earlier investigation.

Mr. BRYANT. What, if anything, did you ask Mayor Clark to do in connection with the investigation of the leak?

Mr. MAZZELLA. We asked Mayor Clark if he would be willing to entertain Judge Hastings in conversations that could be recorded by body recording.

Mr. BRYANT. What steps did you take to get authority to have Clark consensually monitor a conversation with Judge Hastings?

Mr. MAZZELLA. The normal process is that before any body recording authority can be granted, our FBI headquarters in Washington, DC, would have to approve of such an action. We solicited that approval.

Mr. BRYANT. Did you receive it?

Mr. MAZZELLA. Not right away.

Mr. BRYANT. In fact, did Mayor Clark agree to wear a body recorder?

Mr. MAZZELLA. Yes, he did.

Mr. BRYANT. Did he wear a body recorder?

Mr. MAZZELLA. He did not wear a body recorder.

Mr. BRYANT. Well, why not?

Mr. MAZZELLA. After he initially gave his consent to do so, he indicated that upon further reflection and due to his health problems he decided that he would not go forward with that type of cooperation.

Mr. BRYANT. Was a grand jury subsequently convened in which Mayor Clark testified?

Mr. MAZZELLA. Yes, it was.

Mr. BRYANT. And was there anything in his testimony at the grand jury which caused you to believe that you ought to change or expand the focus of your inquiry?

Mr. MAZZELLA. None whatsoever.

Mr. BRYANT. Following the presentation of testimony to the grand jury, did you take any more investigative steps?

Mr. MAZZELLA. Yes, we did.

Mr. BRYANT. What were they?

Mr. MAZZELLA. We decided at that point, after consulting with the Public Integrity Section of the Department of Justice, to conduct some limited interviews of individuals who had or may have specific knowledge of the events surrounding the Miami Metro Action Plan meeting on September 6.

Mr. BRYANT. Would you describe those interviews?

Mr. MAZZELLA. Again, these interviews were conducted by agents of the Miami office. We interviewed three individuals relative to the events surrounding that particular meeting.

Mr. BRYANT. Would you describe the types of individuals that they were?

Mr. MAZZELLA. These individuals were persons whom we believed had direct knowledge of the events because of the position they held or the activities they participated in.

Mr. BRYANT. What did you learn from these interviews?

Mr. MAZZELLA. Well, we learned that both Judge Hastings and Clark, Mayor Clark, were in attendance at the meeting; that Mayor Clark did, in fact, receive an award; after receiving his award, he was seated in the front row of the audience; that Judge Hastings did, in fact, give a speech.

We did incur some conflicts among the people we talked to relative to the length of Judge Hastings' speech, or the exact time that the speech occurred.

Mr. BRYANT. Now, why did you interview only these three people?

Mr. MAZZELLA. Well, there were a number of reasons. We felt at that point that if we went out and talked to more people we would basically be fueling the possibility of spreading rumors and innuendo among the community, recognizing full well that Judge Hastings' reputation and Mayor Clark's reputation could easily be adversely affected. We selected people we thought were extremely confident in the sense of contacting these particular persons. We wanted to get a preliminary reading as to what exactly they had to say.

Mr. **Bryant**. Can you tell the committee where you got the names of these three people?

Mr. **Mazzella**. Yes. We looked at the itinerary for the particular meeting. And, in fact, we interviewed I believe Mayor Starheim first, and he advised us as to who else was in attendance.

We did have a broad list. We knew there were many people in attendance, but we decided to keep it as close-knit as possible.

Mr. **Bryant**. Now, Agent Mazzella, did your investigation reveal that the call, the first call, the one from Ferguson to Waxy Gordon on the morning of September 6, 1985, may have preceded the speech by Judge Hastings on that day?

Mr. **Mazzella**. Yes.

Mr. **Bryant**. Did that cause you to change the focus of your investigation?

Mr. **Mazzella**. No, it did not.

Mr. **Bryant**. Why not?

Mr. **Mazzella**. Well, the time of the call is one factor. You know, it's one of the factors that we have to deal with in these types of complex investigations. There was no evidence that developed during the course of our investigation to indicate that Judge Hastings did not relay the information that we're here discussing today. It's quite possible that the call could have occurred before the actual speech.

Mr. **Bryant**. In the last 25 years, have you ever gotten a case where every single fact and detail was consistent?

Mr. **Mazzella**. I wish I had, but there is always something in a case that makes it difficult to deal with, particularly when witnesses are confronted with very spontaneous type situations or where they're impressed with information that can tend to make them unable to determine the time of events. Timing is a very difficult thing to tie people down to.

Mr. **Bryant**. In the course of your investigation, did you find any evidence that the leak had come from any source other than Judge Hastings?

Mr. **Mazzella**. Absolutely not.

Mr. **Bryant**. Now, let me ask this question: Hadn't there been an inquiry to the FBI about a possible investigation of Mayor Clark way back in July 1985?

Mr. **Mazzella**. Yes, there had.

Mr. **Bryant**. Did that information come to your attention?

Mr. **Mazzella**. Yes, it did.

Mr. **Bryant**. What was the nature of that inquiry?

Mr. **Mazzella**. We had received a telephone call from an individual by the name of Glenn Whittle. The call was placed to Special Agent Tom Dowd, who is an agent assigned to the Miami Division. This individual, Glenn Whittle, told Special Agent Dowd that he had heard from Paul Rico, a former agent of the FBI, that Peter Ferguson and an individual who Dowd later identified as Mayor Clark were under investigation. He asked Special Agent Dowd to confirm that.

Special Agent Dowd at that point contacted his supervisor, told him about the conversation, and in the presence of a supervisor recontacted Glenn Whittle. And he told Glenn Whittle basically that he didn't want to discuss this matter with him.

Glenn Whittle at that point said, in effect, that Paul Rico was just a great kidder.

Mr. BRYANT. When did you first learn about the inquiry that was made by Glenn Whittle to Agent Dowd?

Mr. MAZZELLA. It was either on July 23 or 24, the same day that it occurred or perhaps the day after.

Mr. BRYANT. And what did you do as a result?

Mr. MAZZELLA. Well, I obviously talked to Tom Dowd about it. He at that point had absolutely no idea that there was even an investigation ongoing, and, in fact, there wasn't. Nobody was investigating Peter Ferguson or Mayor Clark. There was no indication, and I don't know why anybody would think that they were. And Tom Dowd was not aware of it. In fact, he was not aware of the Title III that was going on.

Mr. BRYANT. Did you watch for any new developments in the three investigations that you had ongoing that were——

Mr. MAZZELLA. Yes. As a natural consequence of the inquiry, you know, I basically asked Geoff and the other agents assigned to the case to be aware of any possible problems that might arise, although I have to tell you quite frankly I didn't think there would be any problem.

Mr. BRYANT. Well, did the activities of the targets of the investigations that you had ongoing in the weeks that followed the inquiry to Special Agent Dowd show any indication that there had been a leak of a wiretap, or that any other aspects of the undercover operation had been revealed?

Mr. MAZZELLA. As a matter of fact, not—it didn't show that at all, and, in fact, the case actually developed in great leaps and bounds. We had tremendous conversations that occurred starting in July, July 29 on. The wiretap was extremely successful.

Mr. BRYANT. There were no negative results after this inquiry from Whittle to Dowd with regard to the investigation, the subject of it; is that correct?

Mr. MAZZELLA. That is correct.

Mr. BRYANT. Now, was Agent Dowd involved in any way in the investigations that you were supervising?

Mr. MAZZELLA. No. He was not involved in any way whatsoever.

Mr. BRYANT. Let me ask you this question: In the year we're talking about, 1985, how many agents were assigned to Miami, Florida, at that time? How many FBI agents were assigned to Miami, Florida, at that time?

Mr. MAZZELLA. Well, I think I can probably say hundreds. And we did have quite a few agents assigned to the Miami Division.

Mr. BRYANT. Does the FBI frequently get inquiries from outside about whether some person, anyone, is under investigation?

Mr. MAZZELLA. Not only the FBI, but law enforcement agencies as a whole, including the United States Attorney's Office, seem to be deluged with these types of inquiries.

Mr. BRYANT. Now, I'd like to ask you, did there come a time when you tried to speak to Judge Hastings about this matter?

Mr. MAZZELLA. Yes.

Mr. BRYANT. What was the date of your attempt?

Mr. MAZZELLA. May 19, 1986.

Mr. BRYANT. And was a verbatim record of that conversation made?

Mr. MAZZELLA. Yes. Judge Hastings insisted that one be made.

Mr. BRYANT. Well, let me ask you, how did you contact Judge Hastings?

Mr. MAZZELLA. I initially contacted him by phone. I believe I spoke to his secretary. Thereafter, I left a message, and he re-contacted me by telephone.

Mr. BRYANT. Telephone? So explain how this verbatim record was made. I assume the two of you were talking on the telephone.

Mr. MAZZELLA. Well, what he said basically was that if this was going to be an official inquiry, he wanted his court reporter to record the conversation. He volunteered that I could do the same, at which point I said that wouldn't be necessary.

Mr. BRYANT. Well, did she pick up the telephone or how did that work?

Mr. MAZZELLA. I think he just told me she was on the line.

Mr. BRYANT. I'm going to show you House Exhibit 223 and ask you to identify it.

Mr. MAZZELLA. I recognize it.

Mr. BRYANT. Would you tell the committee what it is?

Mr. MAZZELLA. Yes. It's a verbatim transcription of a telephone conference between Judge Hastings and myself dated May 19, 1986, and it shows the court reporter as Brenda J. Coleman, C-o-l-e-m-a-n.

Mr. BRYANT. Does that transcript comport with your recollection of the conversation which you had on that date?

Mr. MAZZELLA. Yes, it does.

Mr. BRYANT. Mr. Chairman, I would ask that House Exhibit 223 be admitted into evidence.

The CHAIRMAN. Is there objection.

Mr. ANDERSON. None whatsoever.

The CHAIRMAN. It will be admitted.

[The document referred to was marked House Exhibit No. 223 and was received in evidence.]

The CHAIRMAN. Representative Bryant, we're at 12 o'clock. I think this might be a good time to recess. We will begin again at 1:30. You can continue with direct testimony at that time.

[Whereupon, at 12:01 p.m., the committee recessed, to reconvene at 1:30 p.m., this same day.]

AFTERNOON SESSION

The CHAIRMAN. The committee will come to order.

We'll proceed, Representative Bryant, with your direct examination of the witness.

Mr. BRYANT. Agent Mazzella, just before the lunch break, I think that I had established with you that there came a time when you contacted Judge Hastings to talk about the leak, and that he had returned your call, you talked on the telephone, and he at that time had his court reporter make a verbatim transcript of your conversation; is that correct?

Mr. MAZZELLA. That is correct.

Mr. Bryant. And that would be House Exhibit 223, which I believe was admitted into evidence; is that correct?

Mr. Mazzella. That's right.

Mr. Bryant. In that discussion with Judge Hastings, did you reveal to him your relationship to the original wiretap which he had approved?

Mr. Mazzella. Yes, I did.

Mr. Bryant. And what was your relationship to that original wiretap?

Mr. Mazzella. I was the supervisor.

Mr. Bryant. Supervising Geoff Santini?

Mr. Mazzella. That's correct.

Mr. Bryant. Did you tell Judge Hastings why you were calling him?

Mr. Mazzella. Yes, I did.

Mr. Bryant. What did you explain to him?

Mr. Mazzella. I explained to him that I had been requested by the Public Integrity Section of the Department of Justice to contact him relative to newspaper articles that had appeared in the Miami Herald in which information was detailed about a disclosure of the wiretap by Mayor Clark to Waxy Gordon. I had indicated to him that the purpose of the contact or the telephone call was to arrange a meeting with Judge Hastings so that we could determine from him whether he had any information that could assist in determining the leak.

Mr. Bryant. Now, what was Judge Hastings' response?

Mr. Mazzella. Judge Hastings indicated that he would not be legally able to assist in the interview inasmuch as it concerned a Title III matter, that it would be, in effect, a violation of law for him to discuss it with the FBI or the Department of Justice.

Mr. Bryant. Now, Agent Mazzella, as the supervising agent of the investigation that was the subject of the wiretap under discussion with Judge Hastings, were you privy to all the information obtained by that wiretap?

Mr. Mazzella. Yes, I was.

Mr. Bryant. As the supervising agent of the investigation, had you participated in the preparation of the affidavit and other documents presented to Judge Hastings?

Mr. Mazzella. Yes, I did.

Mr. Bryant. And Judge Hastings was aware of that; is that correct?

Mr. Mazzella. He was aware that I was Mr. Santini's supervisor. That's correct.

Mr. Bryant. Was there any legal reason why you could not discuss information relating to this wiretap with Judge Hastings?

Mr. Mazzella. No.

Mr. Bryant. At this time, Mr. Chairman, the House would offer into evidence Stipulation Nos. 377 and 378.

The Chairman. Is there objection to those stipulations going into evidence?

Mr. Anderson. No.

The Chairman. They'll be admitted.

[Stipulation Nos. 377 and 388 were received in evidence.]

Mr. **Bryant**. At this time, the House would read Stipulation No. 377, which is that on May 20, 1986, Eric Holder of the Public Integrity Section of the United States Department of Justice called Judge Hastings in order to interview him.

Stipulation No. 378 is that in the May 20, 1986, telephone call with Eric Holder, Judge Hastings declined to be interviewed.

Mr. Chairman, I would now like to offer into evidence, but not read into the record, the following Stipulations: Nos. 346, 353, and 354.

The **Chairman**. Is there objection to those stipulations?

Mr. **Anderson**. No.

The **Chairman**. They will be admitted as well.

[Stipulation Nos. 346, 353, and 354 were received in evidence.]

The stipulations are as follows:

Stipulation No. 346: Judge Hastings' sole source of the information about the actions and statements of Kevin "Waxy" Gordon and Gordon's relationship with Mayor Clark were the applications, affidavits, and progress reports relating to the wiretap initially authorized by Judge Hastings on July 15, 1985, and which he extended on August 15, 1985.

Stipulation No. 353: According to the MMAP Third Annual Conference program, registration for the conference began at 7:30 a.m. on the Terrace Level of the Hyatt Regency Hotel.

Stipulation No. 354: On September 6, 1985, during its Third Annual Conference, the MMAP served a continental breakfast at the Hyatt Regency Hotel in the area outside the Regency Ballroom.

Mr. **Bryant**. The House has no further questions at this time.

The **Chairman**. Is there cross-examination of the witness?

Mr. **Anderson**. Yes, Mr. Chairman, there is.

Good afternoon, Agent Mazzella.

Mr. **Mazzella**. Good afternoon, Mr. Anderson.

CROSS-EXAMINATION

Mr. **Anderson**. I think this is the third time you and I have had a chance to review this story, so let me start again.

Let me begin by focusing on the first 70 days of your investigation, the period from September 9, until November 18, 1985.

Mr. **Mazzella**. Fine.

Mr. **Anderson**. Now, it is my understanding that as a result of an intercepted communication on September 9 you determined that there had been a leak, a serious leak, in the Title III information; is that correct?

Mr. **Mazzella**. You are correct.

Mr. **Anderson**. Now, within the period immediately following September 9, you did not confront Kevin Gordon with this information, did you?

Mr. **Mazzella**. That is correct.

Mr. **Anderson**. And had you confronted him with that, you would have had at least the ability to bring to his attention the provisions of 18 U.S.C. 1001 that permits the prosecution of someone who makes a false statement to the FBI; is that correct?

Mr. **Mazzella**. Yes, that's correct.

Mr. **Anderson**. So he could not very well, without risk of prosecution, have denied what you had intercepted by way of conversations; is that correct?

Mr. **Mazzella**. Possibly.

Mr. **Anderson**. If he had denied it, would you have had a predicate for prosecuting him under 18 U.S.C. 1001?

Mr. **Mazzella**. I don't know. Possibly. It depends on the weight of the evidence.

Mr. **Anderson**. And you did not confront, I take it, Mayor Stephen Clark at that time with this information?

Mr. **Mazzella**. Not at that time.

Mr. **Anderson**. And you did not confront Judge Hastings at that time?

Mr. **Mazzella**. That is correct.

Mr. **Anderson**. So to the extent that early confrontation upon discovery of a matter is at least an investigative tool, that tool was not used in this case?

Mr. **Mazzella**. That's right.

Mr. **Anderson**. Now, I believe you testified this morning—and it was the first time I knew that—that you were aware of the Thomas Dowd memorandum of July 24 reporting an inquiry on behalf of Stephen Clark and Peter Ferguson.

Mr. **Mazzella**. Correct.

Mr. **Anderson**. And I take it you were also aware that from the outset of the investigation in July Mr. Ferguson was a serious subject of the ILA side of that investigation, wasn't he?

Mr. **Mazzella**. No, he wasn't.

Mr. **Anderson**. Was he not one of the people through whom Mr. Rivero was trying to buy his ticket on to the dock?

Mr. **Mazzella**. That information pertaining to Mr. Ferguson was what Kevin Waxy Gordon supplied to Mr. Rivero.

Mr. **Anderson**. I understand that. But that was early information, that this was one of the two sources—Steve Nahay and the rest being the others—one of the two ways through which the FBI had hoped to gain a position on the docks by Mr. Rivero.

Mr. **Mazzella**. That's correct.

Mr. **Anderson**. And that was reflected in the affidavits that were filed in connection with the original wiretap, weren't they?

Mr. **Mazzella**. Yes, that's correct. But let——

Mr. **Anderson**. And at least the——

Mr. **Mazzella**. If I may explain.

The **Chairman**. Yes. Please go ahead.

Mr. **Mazzella**. You referred to Mr. Ferguson as a subject. I know we're mincing words here, but he was not a subject of the investigation. Information pertaining to the fact that he might be an individual who would have to be—or who could possibly get Mr. Rivero into the union was raised. That was the extent of it. He was not a subject.

Mr. **Anderson**. Well, it was raised, but it was fairly actively pursued by Mr. Rivero, wasn't it? He was—it was an object of this investigation to determine whether union memberships that would gain one access to the docks in Miami were up for sale; is that correct?

Mr. **Mazzella**. It wasn't actively pursued, as you put it. The inroads into the union were being actively pursued in other directions, and I don't want to get into the names of those people that we were pursuing because of privacy interests. But the Title III was not targeted at Mr. Ferguson, nor was he a subject of the investigation.

Mr. **Anderson**. I understand.

Mr. **Mazzella**. It was simple information that arose through Waxy Gordon that he gave to Mr. Rivero.

Mr. **Anderson**. But in the progress reports and the supporting affidavits, Mr. Ferguson's name crops up regularly, does it not?

Mr. **Mazzella**. Yes, it does. It does on two occasions.

Mr. **Anderson**. And he was one of the persons through whom you were exploring the possibility of arranging for Mr. Rivero to buy his ticket on to the docks?

Mr. **Mazzella**. No, that's not accurate. We were not exploring an avenue on to the docks through Mr. Ferguson. We were exploring it through another individual who had ties with organized crime.

Mr. **Anderson**. Well, then, I take it, however, whatever material is in the affidavits and progress reports submitted will speak for itself, and we'll both have to live with that.

Mr. **Mazzella**. That's fine.

Mr. **Anderson**. In the initial application, Mayor Clark was at least identified. Mr. Gordon's claim that he had influence with Mayor Clark was included in that original submission which was presented to the judge seeking the authority? There was a record?

Mr. **Mazzella**. Yes. The information relating to Mayor Clark was simply that he was the campaign manager of Peter Ferguson. That was all that was mentioned in the initial affidavit.

Mr. **Anderson**. And that was all information that you explored prior to September—at least that you were aware of prior to September 9, 1985?——

Mr. **Mazzella**. Yes.

Mr. **Anderson** [continuing]. If I understood your testimony this morning?

Mr. **Mazzella**. Yes, that's correct.

Mr. **Anderson**. And during this first 70-day period, you did not reexamine or reconsider whether there might have been another line of continuing inquiry by the Mayor on behalf of the Mayor or Mr. Ferguson? Did you pursue that avenue at all?

Mr. **Mazzella**. There were no other avenues. I'm not sure I understand your question.

Mr. **Anderson**. There were no other avenues, then you didn't pursue them?

Mr. **Mazzella**. No, there were none.

Mr. **Anderson**. We will return to that subject.

Mr. **Mazzella**. OK.

Mr. **Anderson**. Now, you mentioned that there was a recorded conversation between Mr. Rivero and Peter Ferguson and Stuart Morrison, I believe, on October 11, 1985, wasn't there?

Mr. **Mazzella**. Yes, that's correct.

Mr. **Anderson**. And that I think, if I recall your testimony from this morning, was the meeting at which Mr. Ferguson and Mr. Morrison scared Johnny Rivero away from Mayor Clark?

Mr. **Mazzella**. Yes, that's right.

Mr. **Anderson**. And in that conversation, as it was recorded—that conversation was recorded by a NAGRA body recorder worn by Mr. Rivero?

Mr. **Mazzella**. Yes, that's correct.

Mr. **Anderson**. And in the course of that conversation, am I correct that Mr. Rivero tried to gain information from Mr. Ferguson, specifically by talking about the conversation with Steve, and Steve said that Hastings has to back off. Do you recall that?

Mr. **Mazzella**. Yes, I do.

Mr. **Anderson**. Do you recall in that one, Mr. Ferguson flat-out said, "Hastings didn't say nothing to Steve"?

Mr. **Mazzella**. Do I recall that?

Mr. **Anderson**. Yes, from reading that transcript?

Mr. **Mazzella**. Yes.

Mr. **Anderson**. And he went on, "Because a Federal judge, he never talks to the man," do you recall that?

Mr. **Mazzella**. Yes, I do.

Mr. **Anderson**. And he went on, "No way a Federal judge is going to say anything." That was Mr. Ferguson?

Mr. **Mazzella**. Yes, that's right.

Mr. **Anderson**. And later in the conversation, Mr. Ferguson again, "I don't know nothing, I don't even know what you're talking about. I know only one thing, that the Federal judge has never talked to the Mayor, that's for sure, you know that, no way." Do you recall him saying that?

Mr. **Mazzella**. Yes, I do.

Mr. **Anderson**. So, at least as well as whatever the corroborating evidence you had, you had at least one of the principals purportedly involved in this on record as of October 11th, saying, "no way, it didn't happen that way at all," so there is some confounding evidence, as well as some corroborating evidence, is that——

Mr. **Mazzella**. At that point in time?

Mr. **Anderson**. Yes.

Mr. **Mazzella**. That's correct.

Mr. **Anderson**. So, in this first 70 days, apart from Mr. Rivero's seeking to gather additional recorded evidence and apart from your setting up a drug deal to, I take it, establish the proper leverage over Mr. Gordon, what other investigative steps were taken in the first 70 days following your learning that an investigation had been disclosed?

Mr. **Mazzella**. We are still up to November 18th, right?

Mr. **Anderson**. Yes, up until—between September 9th and November 18.

Mr. **Mazzella**. The only investigative steps that we were pursuing at that point was an attempt to gain recorded conversations, either through Johnny Rivero or through Waxy Gordon. That was basically the extent of it.

Mr. **Anderson**. And I take it, after——

Mr. **Mazzella**. May I explain further——

Mr. **Anderson**. Please.

Mr. **Mazzella** [continuing]. Because it is important to understand that, at the same time the North Bay Village police corruption investigation was also being pursued very vigorously, so we were very, very much concerned about doing too much in a sense that might alert other individuals or targets of the investigation. Again, we did not know the full extent of the disclosures, so we had to move carefully.

Mr. ANDERSON. Let me build on your last answer and go back a bit to when you learned on September 9. Had you confronted the principals, Mr. Gordon, Mayor Clark and Judge Hastings, at that time, you might have learned how far the damage had spread and the extent to which you had to contain the investigation, couldn't you?

Mr. MAZZELLA. I think that would have been absolutely ridiculous, and I will tell you why, because if the FBI is not given the opportunity to pursue these allegations properly, and if we were to simply confront subjects immediately upon receiving information, we would never get to the bottom of what happened, because subjects would probably lie or they would change their stories or somehow alter the facts and circumstances and we would never be able to recapture exactly what happened. So, the investigative steps were carefully considered to insure that we would get the truth.

Mr. ANDERSON. Well, I understand. I just want to—there is, one, the investigative steps of that, but I thought you testified extensively this morning, indeed quite extensively, that also concern for damage control and assessing the impact on what I think you said was $300,000 in costs alone and an inestimable number of hours. Determining to what extent the leak had damaged that operation was also consideration on September 9, is that correct? You were involved in damage control, as well as trying to get to the bottom of this?

Mr. MAZZELLA. Absolutely.

Mr. ANDERSON. But you struck the balance in favor of let's get to the bottom of this leak?

Mr. MAZZELLA. Yes.

Mr. ANDERSON. And your investigative steps went forward on that?

Mr. MAZZELLA. Correct.

Mr. ANDERSON. And if I understand it, Mr. Rivero was sent back in with his recordings and Mr. Gordon was eventually brought in to aid you, and that accounts for the steps that were taken in the first 70 days?

Mr. MAZZELLA. Yes, that's correct.

Mr. ANDERSON. Now, it was on November 18 that you were able, in your own mind, to confront Mr. Gordon with the results of your drug investigation, and I think you indicated he pretty rapidly agreed to cooperate?

Mr. MAZZELLA. Yes, that is correct.

Mr. ANDERSON. But it was 60 more days before you could arrange to have a setting in which he was able to record a conversation with Mayor Stephen Clark, is that correct?

Mr. MAZZELLA. That is absolutely correct.

Mr. ANDERSON. Apart from trying to arrange that meeting, were there any additional investigative steps taken during this 60-day period?

Mr. MAZZELLA. We are talking——

Mr. ANDERSON. November 18 through January 17.

Mr. **Mazzella** [continuing]. Through January 17.

Mr. **Anderson**. Yes, sir.

Mr. **Mazzella**. Yes, there were.

Mr. **Anderson**. And what were some of those?

Mr. **Mazzella**. Kevin Waxy Gordon was asked to record conversations with any principal.

Mr. **Anderson**. With any principal, and that would have been Mr. Ferguson, Mr. Gordon, and Mr. Morrison?

Mr. **Mazzella**. That is correct, and he did do so on December 18. He did so——

Mr. **Anderson**. We have heard that conversation this morning.

Mr. **Mazzella**. OK.

Mr. **Anderson**. So, he was able to record a conversation on December 18 and on January 17. Were there any other positive results or negative results of those investigative steps during this period?

Mr. **Mazzella**. No, I think those are the highlights of the investigation to date, until January 17.

Mr. **Anderson**. Now, on January 17, you acquired the conversation between Mayor Clark and Mr. Gordon that we have heard in these proceedings previously, is that correct?

Mr. **Mazzella**. Yes, that's correct.

Mr. **Anderson**. Let me focus now on the next 40 days of the investigation, the period from January 17 until February 8. During that period, did you become aware that the State Attorney for Dade County, Janet Reno, had filed a fairly major, what in the State parlance is called information, naming Alberto San Pedro and others as defendants?

Mr. **Mazzella**. Yes, I'm aware of that.

Mr. **Anderson**. And were you aware that that information explicitly alleged that, as of July 15, 1985, Mr. San Pedro had been trafficking in recorded conversations, conversations that had been recorded pursuant to court-authorized electronic surveillance?

Mr. **Mazzella**. Yes, I'm aware of that.

Mr. **Anderson**. And you were aware that—well, you wouldn't have been aware of it at that time, but you were aware, in essence, of the allegations made in that connection, that they were trafficking in recorded conversations?

Mr. **Mazzella**. I think I know what you're driving at, but maybe you want to expand a little bit. Are you saying that that indictment involved someone wiretapping for Alberto San Pedro, is that what we are getting at?

Mr. **Anderson**. Well, it involved, I gather, allegations that Mr. San Pedro had paid sums of money to acquire recorded conversations that were the products of court-authorized incerpts.

Mr. **Mazzella**. I'm not certain, not having read the indictment, I'm not certain that that was the gist of the charges.

Mr. **Anderson**. Well, I am trying to get the state of your mind. Certainly, the indictment will speak for itself, in terms of what the charges were.

Mr. **Mazzella**. I'm not specifically aware of exactly what the charges were.

Mr. **Anderson**. Were you aware—you were aware that an information had been filed in February 1986?

Mr. **Mazzella**. Generally, yes, I was aware of that.

Mr. **Anderson**. And you were aware that it concerned political corruption or potential political corruption in Hialeah?

Mr. **Mazzella**. Yes.

Mr. **Anderson**. And you were aware that it concerned interference with or in some manner related to Title III—not Title III, but court-authorized intercepted telephone calls, am I correct about that?

Mr. **Mazzella**. No, I'm not sure that it involved court-authorized telephone calls.

Mr. **Anderson**. Do you recall that was fairly widely reported in the Miami press?

Mr. **Mazzella**. Yes.

Mr. **Anderson**. And whatever was there, it certainly had you determined from the press that there was a matter that should be pursued, there was enough information spread on the front page of the Miami Herald to provide a basis for judgment?

Mr. **Mazzella**. Yes.

Mr. **Anderson**. Now, between January 17, the date of the recording of Mayor Clark's conversation, and February 28, the date on which you first confronted the Mayor, what other investigative steps did we take during this period, the 40-day period?

Mr. **Mazzella**. Again, we were approaching a very critical stage in the North Bay Village case and we needed to resolve that investigation before we could move on. We had attempted to have Waxy Gordon conduct additional consensuals. However, he did die on February 2, as I had mentioned in my earlier testimony. So, essentially, on the 20th of February or thereabouts, we decided that we would need to conduct overt interviews of Mayor Clark and others, to solicit their cooperation and move on.

Mr. **Anderson**. Now, let me just be sure I understand. In the first part, January 17 until early February, you thought that you were trying to get Mr. Gordon to record additional consensual information between Mayor Clark and other principals on the disclosure matter?

Mr. **Mazzella**. Yes, that——

Mr. **Anderson**. You weren't using Mr. Gordon in that phase in the North Bay Village thing at all?

Mr. **Mazzella**. No, we were not, that's correct.

Mr. **Anderson**. And after Mr. Gordon died, you then determined the next investigative step was to approach the Mayor——

Mr. **Mazzella**. That was the only logical——

Mr. **Anderson** [continuing]. And the other principals involved?

Mr. **Mazzella**. Right.

Mr. **Anderson**. Now, refresh my recollection, I don't really recall. What date did Kevin Gordon die?

Mr. **Mazzella**. On or about February 20.

Mr. **Anderson**. And then you simultaneously dispatched people to interview Mayor Clark, Peter Ferguson, Richard Bonehill, and Stu Morrison on the morning of February 28, is that correct?

Mr. **Mazzella**. Yes, that's correct.

Mr. **Anderson**. Now, when you confronted the mayor, I believe you testified in the House that the only thing you had to confront the Mayor with was the January 17 tape, is that correct?

Mr. **Mazzella**. That is correct.

Mr. **Anderson**. And the mayor has testified that you no more than asked for his cooperation and he said you've got it. Is that the essence of your recollection of that?

Mr. **Mazzella**. Yes.

Mr. **Anderson**. Mr. Chairman, might I approach the witness?

The **Chairman**. Yes, you may.

Mr. **Anderson**. I am going to ask for you to look at what has been marked as Respondent's Exhibit No. 51.

Mr. Chairman, we have given copies of it, maybe it can be distributed.

Do you recognize that Telex, Agent Mazzella?

Mr. **Mazzella**. Can you give me just a second to browse through it?

Mr. **Anderson**. Yes. In particular, when you browse, I will probably focus upon pages 4 and 5.

Mr. **Mazzella**. I do recognize this.

Mr. **Anderson**. And in your capacity as supervisory agent, that would have been reviewed and approved by you before it was sent to the Director, is that correct, sir?

Mr. **Mazzella**. It was approved by me.

Mr. **Anderson**. Directing your attention now to—well, first, if we could identify for the committee, am I correct that this is a memorandum sent from the Miami office on March 3, 1986, to the Director, priority, Washington headquarters?

Mr. **Mazzella**. Yes, that's correct.

Mr. **Anderson**. And in this memorandum, you are reviewing the status of the investigation and explaining why you do not want to immediately take Mayor Clark before the grand jury, among the other topics you are addressing?

Mr. **Mazzella**. Yes, that is correct.

Mr. **Anderson**. And in that memorandum, you reported that—and I think I am quoting on page 4:—

> On the other hand, Miami does not believe locking Clark into his testimony by way of grand jury appearance prior to consensual monitoring his conversations necessary for the following reasons: (1) Clark's presence at any grand jury increases the chance of leaks; (2) the Department of Justice has already authorized the prosecution of Clark under Title 18, U.S.C., section 101, Clark's testimony before a Federal grand jury could significantly impede prospects of such a prosecution, thereby eliminating a bargaining tool in seeking Clark's cooperation; (3) Clark is already, in effect, locked into his testimony through his own words duly recorded; and (4) that the DOJ is opposed to committing Clark's testimony to FGJ, Federal grand jury record at this time, because, as mentioned earlier, it would impede section 101 prosecution.

Do you recall that those assertions were in your memo?

Mr. **Mazzella**. Yes, I do.

Mr. **Anderson**. Do you recall testifying at the House, and you were asked I think by Representative Conyers, by Representative Edwards, and probably most clearly by Representative Bryant, whether, at the time you confronted Mayor Clark, you had anything on him at all as leverage that might have been able to induce his testimony.

Mr. **Mazzella**. Yes, I remember that.

Mr. **Anderson**. Do you recall answering no, other than the January 17 tape?

Mr. MAZZELLA. Yes, I remember my response.

Mr. ANDERSON. Now, since I filed this one and expressed some concern, I have had an explanation but it has come to me secondhand and I really wanted to be sure that this was the explanation.

I was told that the assertions in that memorandum were based on the fact that the Department of Justice had approved the prosecution of any one of these principals if they did not tell you the truth when you confronted them. Is that——

Mr. MAZZELLA. That is absolutely correct.

Mr. ANDERSON. They represented that they would be prosecuted if they did not tell you the truth when you confront them with this information, is that correct?

Mr. MAZZELLA. That is correct.

Mr. ANDERSON. And the people they talked about were Mayor Clark, Peter Ferguson, Stu Morrison and Richard Bonehill, is that correct?

Mr. MAZZELLA. That's correct.

Mr. ANDERSON. So, if I understand the explanation as we now have it, what that Telex was referring to was that each of these persons would be prosecuted if they did not forthrightly tell you what had happened in connection with this leak, is that correct, sir?

Mr. MAZZELLA. I don't think you can read that into the teletype. We are talking about Mayor Clark.

Mr. ANDERSON. No, I couldn't read it into the teletype, and this is why I was surprised your answer to Representative——

Mr. MAZZELLA. We're talking about—let me put this into context——

Mr. ANDERSON. Please do.

Mr. MAZZELLA [continuing]. Because the motions you filed before the committee here were somewhat overdone, I think, relative to my testimony. In fact, calling me a liar was not very good, but let me just put it into context.

Mr. ANDERSON. I think he feels exactly the same.

Mr. MAZZELLA. This teletype was submitted to FBI headquarters at their request, to justify consensual monitoring of Judge Hastings by Mayor Clark. The reasons we set forth in this teletype were specifically aimed at stating what the FBI Miami's position was relative to that consensual monitoring. The thing relates specifically to Mayor Clark. It has nothing to do with anyone else in this matter except Mayor Clark.

Specifically, there was—the only thing that the Department of Justice had authorized was that, if Mayor Clark lied during the course of his interview with the FBI, he could be prosecuted for violation of Title 18, U.S.C. section 1001. That was it, the bottom line, nothing further to be drawn from all of this.

Mr. ANDERSON. I agree nothing could, but as you recall, your "upsetness" with my motion or whatever was filed produced a response from the managers in which they reported the results of an interview with you and Mr. Santini, do you recall that?

Mr. MAZZELLA. Yes, I do.

Mr. ANDERSON. And let me just now confront, to be sure we are right, the explanation was as follows:

His statement that the Department of Justice had already authorized prosecution of Mayor Clark under Title 18, section 101 of the Federal Criminal Code—making a false statement in a Federal matter—was based on a conversation between Santini and Christopher Mazzella of the FBI and Eric Holder and John Campbell of the Public Integrity Section of the Department of Justice.

Is that an accurate report?

Mr. **Mazzella**. Yes. Are you talking about—is that my report or Mr. Santini's?

Mr. **Anderson**. Now, this is what came back from the managers——

Mr. **Mazzella**. OK. Yes, that is accurate.

Mr. **Anderson**. I again quote:

> During that conversation, which was prior to the interview of Mayor Clark, Holder and Campbell said that if any of the four witnesses the FBI was planning to interview (viz., Mayor Clark, Peter Ferguson, Stu Morrison, and Richard Bonehill) lied at their interview, the witness would be prosecuted under section 101.

Was that a correct statement of the conversation between you and——

Mr. **Mazzella**. Well, as far as it concerns Mayor Clark, it is a correct statement, but I can't read into it the other individuals that you mention there.

Mr. **Anderson**. Pardon?

Mr. **Mazzella**. As far as it pertains to Mayor Clark, that is a correct statement.

Mr. **Anderson**. Well, the managers have represented to the Senate that it was also a correct statement with respect to Peter Ferguson, Stu Morrison and Richard Bonehill, and I take it their representations were based on conversations with you and Agent Santini or someone. Were their representations correct, sir?

Mr. **Mazzella**. I don't know. All I can tell you is what is in this teletype, and it pertains to Mayor Clark.

Mr. **Anderson**. Wait. You were privy to a conversation with Eric Holder, were you not?

Mr. **Mazzella**. That's correct.

Mr. **Anderson**. And in that, the subject of 18 U.S.C. 101 prosecutions was discussed, was it not?

Mr. **Mazzella**. Yes, that is correct.

Mr. **Anderson**. Is it correct that they said that any of the four principal witnesses, Mayor Clark, Peter Ferguson, Stu Morrison, or Richard Bonehill, would be prosecuted if they gave false statements in their subsequent interviews? Did they say that or not?

Mr. **Mazzella**. I don't recall. All I can tell you is, based upon a teletype that we sent from Miami, it pertains to Mayor Clark. That's what you are asking me about.

Mr. **Anderson**. I am also asking you, though, subsequent to—as you indicated, you were unhappy with my motion, which was also based on your teletype and your testimony——

Mr. **Mazzella**. Right.

Mr. **Anderson** [continuing]. Subsequently I have had a report of something that apparently you did recall when the Managers asked you about it, and that was that Holder and Campbell said any of these four witnesses would be prosecuted under section 18 U.S.C. 1101, if they gave false statements to you.

Mr. MAZZELLA. That may very well be. I am telling you, I don't recall the entire context of that conversation. I do remember that, as far as Mayor Clark was concerned, which was my main interest at the time, he would be prosecuted if he lied.

Mr. ANDERSON. Did he—let me find out, just to clarify for myself—were you among the persons with whom the managers or their staff discussed, after I filed my scurrilous motion, to get an explanation for that Telex in context, did they speak with you?

Mr. MAZZELLA. Yes.

Mr. ANDERSON. And as I have read the report back to the Senate, was that a report that you reviewed and joined in?

Mr. MAZZELLA. I didn't review it.

Mr. ANDERSON. Who else, to your knowledge, did they—where else could they have gotten this information from, if you know?

Mr. MAZZELLA. They may have talked to Agent Santini or to myself or perhaps from contact with other people in the FBI. I don't know. I would tell you, if that was the basis for it, then fine, but as far as Mayor Clark is concerned, the specific teletype here and, as I understand it, your question as to whether Mayor Clark would be prosecuted, absolutely yes. As far as the other three individuals are concerned, I just don't remember specifically whether they were included in that prosecutive opinion.

Mr. ANDERSON. So, you do recall that, in the course of the conversation with Mr. Campbell and Mr. Holder, they did pre-approve prosecution of Mayor Clark——

Mr. MAZZELLA. Yes.

Mr. ANDERSON [continuing]. But you don't recall whether they approved of the other persons?

Mr. MAZZELLA. I don't recall. They may have, but I don't remember.

Mr. ANDERSON. Now, it is—and I do become confused by these things—if I understand it, it is customary for the FBI to reduce the contents of a significant interview to something called a 302?

Mr. MAZZELLA. Yes, that's correct.

Mr. ANDERSON. In the case of the Mayor Clark interview, there were a series of interviews over a period of time, from February 24 to March 5, were there not?

Mr. MAZZELLA. February 28——

Mr. ANDERSON. February 28 to March 5.

Mr. MAZZELLA [continuing]. Through March 5, 5th or 6th, I don't remember which, one of those two dates.

Mr. ANDERSON. And ultimately, all those different interviews were consolidated into one summary memorandum, were they not?

Mr. MAZZELLA. Yes.

Mr. ANDERSON. Now, when you have someone where the Justice Department thinks there is a serious likelihood that they might be prosecuted under 18 U.S.C. 1801, is it not customary for the agents to so advise them?

Mr. MAZZELLA. Yes.

Mr. ANDERSON. Might I approach the witness again, Mr. Chairman.

The CHAIRMAN. Yes, you may.

Mr. ANDERSON. Could I move the admission of Respondent's 51, the Telex we've just been discussing?

The **Chairman**. Is there objection to the admission of Respondent's Exhibit 51?

Mr. **Bryant**. No objection.

The **Chairman**. It will be admitted.

[The document referred to was marked Respondent's Exhibit No. 51 was received in evidence.]

Mr. **Anderson**. Agent Mazzella, I have shown you what has been marked as Respondent's Exhibit 55.

Mr. **Mazzella**. Yes.

Mr. **Anderson**. In the course of your duties as supervisory agent, have you seen that document before?

Mr. **Mazzella**. I probably have, yes.

Mr. **Anderson**. And can you describe for the committee what that document is?

Mr. **Mazzella**. It's an FD 302 prepared by Special Agent Nottoli and Dennis Lacina, relative to an interview of Peter Ferguson, which occurred on February 28, 1986.

Mr. **Anderson**. Now, that particular interview occurred on February 28 and, if I am reading this right, it was dictated and transcribed on February 28, is that correct?

Mr. **Mazzella**. Yes, that's correct.

Mr. **Anderson**. In the course of that interview, if I could direct your attention, for example, to page 5, the agents asked Mr. Ferguson some prepared questions, did they not? You intended that they elicit specific responses?

Mr. **Mazzella**. Yes, that's correct.

Mr. **Anderson**. Among the responses, the question asked was, "Did anyone ever tell you the FBI was investigating Kevin Gordon?" question No. 11, to which it is reported Ferguson replied, "Nobody ever told me the FBI was investigating Kevin Gordon, maybe the AA, but not the FBI." That was what they reported back to you that happened on that question, is that correct, sir?

Mr. **Mazzella**. That is in the 302, that's correct.

Mr. **Anderson**. And the next question was, "Did anyone ever tell you that there were wiretaps on the telephones used by Kevin Gordon?" Purportedly, Mr. Ferguson replied, "No one ever told me or anyone else there was a wiretap on Kevin Gordon's phone." That is the report that you received back from the agents?

Mr. **Mazzella**. Yes, that's correct.

Mr. **Anderson**. And I don't want to belabor the point, so let's skip to question 15, "Did you ever hear from any conversation that you had with Steve Clark that Steve Clark received information about an FBI investigation from United States District Judge Alcee Hastings?" to which Ferguson replied, "Never received word from Steve Clark that Clark had received information about an FBI investigation by United States District Judge Alcee Hastings." Ferguson advised further he had met Alcee Hastings only once in the Knight Center in 1984. Ferguson added, "Clark never mentioned to me about this ever taking place." Is that——

Mr. **Mazzella**. That's correct.

Mr. **Anderson**. Without belaboring——

The **Chairman**. Mr. Anderson, just as a matter of orderly procedure, if you are going to move the introduction of this exhibit, maybe you could do it before you do too much examination with the witness, we could pass it out.

Mr. ANDERSON. I would—this exhibit's admission right now.

The CHAIRMAN. Is there objection to the exhibit being admitted?

Mr. BRYANT. No objection.

The CHAIRMAN. It will be admitted and the clerk can pass it out to the committee.

[The document referred to was marked House Exhibit No. 55 and was received in evidence.]

Mr. ANDERSON. And in the course of that interview, by the end the FBI told Mr. Ferguson that they thought he was lying through his teeth, didn't they?

Mr. MAZZELLA. Yes, I believe they did.

Mr. ANDERSON. And they explicitly advised him that he would be subject to prosecution under 18 U.S.C. 1001, didn't they?

Mr. MAZZELLA. Yes, they did.

Mr. ANDERSON. Has Peter Ferguson, to your knowledge, ever been prosecuted for the false statements that he allegedly made on that occasion?

Mr. MAZZELLA. No, he has not.

Mr. ANDERSON. And you don't know whether the representation upon which your March 3 Telex was based, the conversation by Mr. Campbell and Mr. Holder, extended to a promise that Mr. Ferguson would be prosecuted if he gave false statements, you don't recall that?

Mr. MAZZELLA. I don't recall that.

Mr. ANDERSON. Now, let me take, if you will—by March 5 you had completed your interviews with Mayor Clark, is that correct?

Mr. MAZZELLA. Yes, that's correct.

Mr. ANDERSON. And he was called before the grand jury ultimately I think on March 20, was it?

Mr. MAZZELLA. Yes, that is correct.

Mr. ANDERSON. And let us take the period here from March 5 to March 25. Were there further investigative steps taken in that period of time?

Mr. MAZZELLA. Yes, there were.

Mr. ANDERSON. What were they, in summary? I understand recollection is difficult.

Mr. MAZZELLA. No, that's not the problem. The problem is you are asking me your question that I have been asked not to respond to by the committee, so I cannot get into that.

Mr. ANDERSON. Is there some question that you have instructed this witness not to respond to, Mr. Chairman, that I am unaware of?

The CHAIRMAN. What was the question again, counsel?

Mr. ANDERSON. The question is what investigative steps were taken between March 5 and 25, 1986?

The CHAIRMAN. The only instruction that we gave to both counsel for the House and counsel for Respondent is that we did not want testimony with regard to polygraph examinations and efforts to——

Mr. ANDERSON. I think I am well past that point. Very well, if that is what we are talking about, I agree.

Is that the only investigative steps——

Mr. MAZZELLA. That was one of them.

Mr. ANDERSON. Were there other investigative steps unrelated to that step?

Mr. MAZZELLA. Yes, we had the grand jury on the 20th and we then had additional interviews on March 25 through 27.

Mr. ANDERSON. Now, turning to March 25 and March 27, do you recall that some stories appeared in the Miami Herald concerning Mayor Clark's testimony before the grand jury?

Mr. MAZZELLA. Yes, I do.

Mr. ANDERSON. Do you recall what those stories linked or at least raised the allegation that the source of the information Mayor Clark had received was Judge Alcee Hastings?

Mr. MAZZELLA. I don't believe the news stories said that. They said——

Mr. ANDERSON. They identified Judge Hastings as the authorizing——

Mr. MAZZELLA [continuing]. Causing——

Mr. ANDERSON [continuing]. The supervisor who authorized the wiretaps.

Mr. MAZZELLA. That's correct.

Mr. ANDERSON. And those were fairly large stories, by Miami Herald standards, were they not, sir?

Mr. MAZZELLA. Yes, they were.

Mr. ANDERSON. Now, those stories clearly indicated that there had been a leak of grand jury information, didn't they?

Mr. MAZZELLA. If you have a copy of the story, maybe I can refresh my recollection. I don't remember if they specifically said the information came from the grand jury. I don't recall——

Mr. ANDERSON. Well, they really said "reliable sources."

Mr. MAZZELLA. Yes. I remember they did mention that Mayor Clark was subpoenaed before the grand jury, but I don't think they identified where that information came from.

Mr. ANDERSON. No, they didn't identify their sources, but it indicated enough about the call and the purpose of this call to indicate that the reporter knew some of what had gone on behind the grand jury's closed doors.

Mr. MAZZELLA. Again, I don't have the article in front of me. I don't want to——

Mr. ANDERSON. Could I ask that the House exhibit—and I don't have the number handy—the Miami Herald story from—may I have a moment, Mr. Chairman?

The CHAIRMAN. Yes, you may.

[Pause.]

Mr. ANDERSON. I show you what has been marked as House Exhibit 188 and ask if you have seen that.

Mr. MAZZELLA. I am reading through this very quickly. I do not see any mention of the source being tied to the grand jury whatsoever.

Mr. ANDERSON. Well, I understand that, so let's me run through it with you briefly, just so the committee shares our mutual understandings.

The story does report that Metro Dade Mayor Steve Clark was asked by a Federal grand jury last week if he leaked information about a secret wiretap, the Herald had learned.

Mr. **Mazzella**. Yes, that's correct.

Mr. **Anderson**. And that would have been a question asked within the grand jury itself, would it not——

Mr. **Mazzella**. Yes.

Mr. **Anderson** [continuing]. That they are reporting?

Mr. **Mazzella**. Yes.

Mr. **Anderson**. And the story also reported the grand jury is investigating possible corruption in Miami's Building and Zoning Department, and investigators wanted to know how Clark learned of the wiretap at the home of Kevin Gordon, Sr., sources familiar with the case said. That also would have been a matter which—to this point in time, I think your testimony was this morning you had taken very careful wraps to keep confidential, is that correct?

Mr. **Mazzella**. Yes, that's correct.

Mr. **Anderson**. Now, the story does go on to disclose that it is the wiretap that Judge Alcee Hastings had authorized, do they not?

Mr. **Mazzella**. Yes, that's correct.

Mr. **Anderson**. Now, when you saw this story, were you concerned that there had been a leak from within Government sources of information related to what you yourself described as sensitive, confidential investigation or, perhaps even worse, from behind grand jury doors?

Mr. **Mazzella**. It was a consideration. I mean——

Mr. **Anderson**. I take it, the secrecy of the grand jury is almost as sacrosanct as the secrecy of the Title III matters, is that a fair assessment?

Mr. **Mazzella**. Yes.

Mr. **Anderson**. And I take it, when you are running a sensitive investigation, it is a matter of considerable importance, especially for the agent in charge of the public corruption squad, that you be able to assure that matters you want confidential be kept confidential?

Mr. **Mazzella**. That's correct.

Mr. **Anderson**. And Mayor Clark has previously testified he was not the source who gave it to the Herald, is that correct?

Mr. **Mazzella**. I don't know.

Mr. **Anderson**. Obviously, you had not yet confronted Judge Hastings, had you?

Mr. **Mazzella**. No.

Mr. **Anderson**. And using your own process of reasoning from this morning, there must have been a fairly limited number of people who even knew this investigation was under way, is that correct?

Mr. **Mazzella**. I can speak from what the FBI do. Now, we had already interviewed Mayor Clark and several other individuals relative to this matter. Mayor Clark had already discussed the matter with his attorney. It is possible that these other individuals may have discussed the matter with other people. I don't know. I would say that within the Government circle, yes, it was tightly held information and, as far as the grand jury was concerned, I would presume that the grand jurors would be careful about what they said and did outside the grand jury room.

Mr. **ANDERSON**. I guess I'm looking for the FBI response. We have had—there is no reason you should know, but there was a disclosure shortly after October 9 which had some consequences for a confidential informant, there was a disclosure that you are discussing here which had consequences for an undercover informant in ongoing investigations, and here we have another disclosure of a sensitive matter. I am trying to get a sense as to whether you focused the same diligence on trying to unravel this disclosure and get to the bottom of it, the one that occurred sometime on or before March 27, as you did on the one that appears to have occurred on or about September 6.

What investigative steps did you take to find out how Brian Duffy and the Miami Herald learned what was going on inside a grand jury?

Mr. **MAZZELLA**. Well, when Brian Duffy contacted the FBI office, the news media coordinator who he spoke to asked him where he got the information from. Brian Duffy would not reveal the source of his information. The only logical step then would be for us to go to Brian Duffy, a newspaper reporter, and ask him to divulge his sources. That's a futile attempt, so——

Mr. **ANDERSON**. Well, you could have—again, I am trying to put in context, I have some admiration for Mr. Duffy and understand that might have been a futile attempt, but you could have confronted Mayor Clark or Kevin Gordon way back on September 9, you chose not to, but you were able to design a series of investigative steps you thought would get to the bottom of it.

Mr. **MAZZELLA**. Yes.

Mr. **ANDERSON**. You could have, I take it, interviewed the grand jurors, couldn't you?

Mr. **MAZZELLA**. All right.

Mr. **ANDERSON**. You could have interviewed the court reporter which transcribed the proceedings, you could have interviewed others who might have been aware. Indeed, you could have gone out to those people you had interviewed and find out, "Did any of you talk with Brian Duffy?" You could have at least taken some steps to find out the source of this leak, couldn't you?

Mr. **MAZZELLA**. He was talked to.

Mr. **ANDERSON**. Duffy I know was.

Mr. **MAZZELLA**. Yes. We did not take any active investigative steps to determine the source of the leak.

Mr. **ANDERSON**. Now, after this leak and the attendant publicity, I take it the sensitivity attached to this investigation materially declined, is that correct, the need for confidentiality?

Mr. **MAZZELLA**. Yes.

Mr. **ANDERSON**. The proverbial cat was among the pigeons and it was on the front pages of the Herald.

Mr. **MAZZELLA**. Right.

Mr. **ANDERSON**. Now, in your investigations subsequent to Mayor Clark's grand jury testimony, let us take, for example, the period, just to keep my chronology, from March 25 until, say, May 5, another 35 or so days. Did you learn that the MMAP offices had registration cards for most of the 800 persons who attended?

Mr. **MAZZELLA**. Yes.

Mr. ANDERSON. And did you make any attempt to obtain copies or review those?

Mr. MAZZELLA. No, we did not.

Mr. ANDERSON. Did you, in the course of your non-covert, your over investigation learn that slide photographs had been taken of the opening session at which Judge Hastings gave——

Mr. MAZZELLA. Yes, we did find out.

Mr. ANDERSON. When did you learn that, Agent Mazzella?

Mr. MAZZELLA. It was sometime after our interviews of the three individuals we interviewed. I would say it must have been probably in maybe June, May or June of 1986.

Mr. ANDERSON. And did you ever obtain copies of those two——

Mr. MAZZELLA. No, we didn't.

Mr. ANDERSON. Are you confident of that, and let me post to you the alternative. Those were first presented in open forum by myself on behalf of Judge Hastings at a hearing in Atlanta, which occurred in 1988, 1987 or 1988. Had you known about them before you learned that they had been presented at that hearing?

Mr. MAZZELLA. Oh, I think I—okay, I think I see what you're saying. No, I don't—you are talking about the photographs themselves?

Mr. ANDERSON. Yes.

Mr. MAZZELLA. I'm not sure, I don't think we learned about those until around that time.

Mr. ANDERSON. OK. And that would have been as a result of information that Judge Hastings presented in Atlanta?

Mr. MAZZELLA. That's correct. I'm sorry, I misunderstood your question.

Mr. ANDERSON. And in the course of your interviews, your agents' interviews at the Metro Miami Action Plan staff office, did they interview a woman whose then name was Florence Joyette Royals?

Mr. MAZZELLA. No, they did not.

Mr. ANDERSON. They did interview, however, Patricia Thomas and Cornelius Allen, did they not?

Mr. MAZZELLA. Patricia Thomas and who?

Mr. ANDERSON. Pat Thomas and Cornelius Allen?

Mr. MAZZELLA. I don't recall the name Cornelius Allen being among those interviewed.

Mr. ANDERSON. But you do recall Pat Thomas?

Mr. MAZZELLA. Yes, I do.

Mr. ANDERSON. And they interviewed Lanny Sumpter, the Executive Director?

Mr. MAZZELLA. Right.

Mr. ANDERSON. They interviewed Merritt Sterheim, then county manager, did they not?

Mr. MAZZELLA. Yes, they did.

Mr. ANDERSON. And there were a number of people on the program for that morning identified as being program participants at one level or another. Were all of those people who were named there interviewed?

Mr. MAZZELLA. Yes. In addition, I believe Leslie Pantene and one other person whose name I don't recall was also interviewed.

Mr. ANDERSON. Well, Jesse McCrary was listed as the person who was scheduled to introduce Judge Hastings as keynote speaker. Was he interviewed in this——

Mr. MAZZELLA. No, he was not.

Mr. ANDERSON. Now, in the course of your investigations in this phase of the investigation and indeed thereafter, did the FBI have occasion to interview Monsignor Walsh?

Mr. MAZZELLA. No.

Mr. ANDERSON. In the course of your investigation, did you learn that Judge Hastings had conversed briefly with Monsignor Walsh and Mayor Clark prior to the beginning of the ceremonies?

Mr. MAZZELLA. No.

Mr. ANDERSON. And did you at any time prior to the Atlanta proceedings learn that Judge Hastings and Mayor Clark and Monsignor Walsh had met prior to that?

Mr. MAZZELLA. No.

Mr. ANDERSON. Subsequent to that time, did you learn that it was Judge Hastings who had brought forth, who had testified concerning that meeting and identified Monsignor Walsh as the person?

Mr. MAZZELLA. Yes.

Mr. ANDERSON. So, it was not an FBI investigative step or indeed a House investigative step that brings Monsignor Walsh before us, it is Alcee L. Hastings telling the world, "I saw the man before the meeting, and Monsignor Walsh was there"?

Mr. MAZZELLA. That's correct.

Mr. ANDERSON. Might I approach the witness again, sir?

The CHAIRMAN. You may.

Mr. ANDERSON. Did I move 55 into evidence?

The CHAIRMAN. Has 55 already been admitted?

Mr. MCGANNON. Yes.

The CHAIRMAN. It has been admitted.

Mr. ANDERSON. Agent Mazzella, I show you what has been marked as Respondent's Exhibit No. 50. Can you identify that for the committee?

Mr. MAZZELLA. Yes, I can.

Mr. ANDERSON. And what is it?

Mr. MAZZELLA. It is a teletype to FBI Headquarters, dated May 1, 1986.

Mr. ANDERSON. And in that teletype, again, that is a teletype which both you and Agent Santini authored and approved, is it not?

Mr. MAZZELLA. I authored it, he helped in its writing.

Mr. ANDERSON. And that expresses the views of the Miami office?

Mr. MAZZELLA. Yes, that's correct.

Mr. ANDERSON. And I take it you were in that memorandum responding to a preliminary decision by the Department of Justice not to prosecute Judge Alcee Hastings, is that correct?

Mr. MAZZELLA. That's right, that decision was rendered on April 1986 by the Department of Justice.

The CHAIRMAN. Mr. Anderson, again, if this is something that will be moved into evidence——

Mr. ANDERSON. I move its admission at this point.

The CHAIRMAN. Is there objection to its admission?

Mr. **Bryant**. No objection.

The **Chairman**. It will be admitted and it can be passed out to the committee.

[The document referred to was marked Respondent's Exhibit No. 50 and was received in evidence.]

Mr. **Anderson**. Now, in that memorandum you urged criminal prosecution, regardless of the outcome. Do you recall that?

Mr. **Mazzella**. Yes, I do.

Mr. **Anderson**. And as one of the grounds you suggested, that because the charge might be contempt, might be criminal contempt, you might be able to avoid the impediment of jury with the possibility of an inconsistent verdict. Do you recall urging that as the grounds?

Mr. **Mazzella**. Yes, I do.

Mr. **Anderson**. Now, you recall at the end that you thought the process of criminal prosecution should be exhausted, and then noncriminal sanctions should be sought on the basis of the information available?

Mr. **Mazzella**. Yes, I do.

Mr. **Anderson**. Would it be unfair for me to describe that as a fairly strongly worded memorandum from the field to Headquarters?

Mr. **Mazzella**. Well, I wouldn't view it as a strongly worded memorandum, other than simply a statement of the Miami Division's position.

Mr. **Anderson**. And the Miami Division's position was it disagreed with the Public Integrity Section flat-out and was urging Headquarters to make those views forcefully known to the Department of Justice, was it not?

Mr. **Mazzella**. Yes, that's correct.

Mr. **Anderson**. Now, Agent Mazzella, the House has admitted as House Exhibit 223—and I think it is still before you for examination—the transcript of a telephone conversation between yourself and Judge Hastings. Do you have that in front of you?

Mr. **Mazzella**. Yes, I still have that.

Mr. **Anderson**. And I think you identified that as an accurate transcript of the conversational proceedings that took place, didn't you?

Mr. **Mazzella**. Yes, that's correct.

Mr. **Anderson**. Could I direct your attention to page 5, and at the last assertion before your response, your first response, do you recall that Judge Hastings asked you, after considerable conversation, "Are you investigating me?"

Mr. **Mazzella**. Yes, I recall that.

Mr. **Anderson**. Do you recall your response, "No, oh, no"?

Mr. **Mazzella**. Right, I recall that.

Mr. **Anderson**. And that was on May 19?

Mr. **Mazzella**. Yes.

Mr. **Anderson**. Do you recall my raising this issue within the House and your saying if you said that, it would have been a flat-out misstatement? Do you recall saying that?

Mr. **Mazzella**. I don't remember it exactly, but——

Mr. **Anderson**. Well, it was a misstatement, wasn't it?

Mr. **Mazzella**. What, my statement, "No, oh, no"?

Mr. Anderson. Yes.

Mr. Mazzella. No, it wasn't a misstatement.

Mr. Anderson. Why wasn't it a misstatement?

Mr. Mazzella. Because we had concluded our investigation of this matter on April 4.

Mr. Anderson. I thought you were instructed by Mr. Holder to seek out, to interview Judge Hastings concerning this leak.

Mr. Mazzella. Yes, that's correct.

Mr. Anderson. That is prior to the declination memorandum being finalized, was it not?

Mr. Mazzella. Prior to the Department's declination?

Mr. Anderson. Issuing a formal declination memo.

Mr. Mazzella. Well, that may have been prior to their formal declination, but the Department declined prosecution on April 4.

Mr. Anderson. And they advised you—that was the preliminary decision that you were responding to on May 1, wasn't it?

Mr. Mazzella. No, it was no preliminary decision. The decision was that they declined prosecution on April 4, 1986.

Mr. Anderson. Well, let me just be sure I have the sequence.

Mr. Mazzella. OK.

Mr. Anderson. The Department advised you on April 4 that they were not going to prosecute Judge Alcee Hastings, is that correct?

Mr. Mazzella. That's correct.

Mr. Anderson. On May 1, you authored a memorandum which was forwarded, indicating that the Miami office strongly disagreed with that view——

Mr. Mazzella. Yes.

Mr. Anderson [continuing]. And urging Washington Headquarters to go to the Department of Justice and get it reviewed.

Mr. Mazzella. Right.

Mr. Anderson. Subsequent to that time, you interviewed Judge Hastings concerning this matter, and in the course of that indicated that Eric Holder and John Campbell, Eric Holder or John Campbell of Public Integrity would like to talk with him about it, is that correct?

Mr. Mazzella. That's correct.

Mr. Anderson. And when he asked you, "Are you investigating me?" and you said, "No, oh, no," you think that that was a fair statement of the then state of play?

Mr. Mazzella. Right.

Mr. Anderson. Might I have a moment, Mr. Chairman.

The Chairman. You may have a moment, yes.

[Pause.]

Mr. Anderson. Agent Mazzella, you initially testified before a special committee in Atlanta, is that correct?

Mr. Mazzella. Yes, that's correct.

Mr. Anderson. That's the first time you publicly testified concerning this matter?

Mr. Mazzella. Right.

Mr. Anderson. And you then again testified before the House subcommittee, is that correct?

Mr. Mazzella. Yes, that's correct.

Mr. Anderson. And you have testified here in these proceedings. Agent Mazzella, there are certain aspects of your testimony this morning which were new to me in terms of some of the explanations you have given. Is your memory of some of these details getting better? I am truly trying to find out. You have explained, I have heard explanations from you and from Mr. Santini that appear designed to close off avenues that were opened on cross-examination before. How is that happening?

Mr. **Mazzella**. Could you tell me exactly what you're talking about?

Mr. **Anderson**. I hadn't heard about the October 11 recorded conversation in my prior examinations of you, and it was not until after you testified in the House that I received the necessary information to even know existed.

Mr. **Mazzella**. Well, you probably never asked me.

Mr. **Anderson**. That's probably true, I didn't have the information to. And I had not heard, until I read the House's explanation and had an opportunity to engage with you, that the Department of Justice authorized the prosecution of at least Mayor Clark under 18 U.S.C. 1001 at the time you were confronting him in the interview.

Mr. **Mazzella**. That has been common knowledge for months and months and months.

Mr. **Anderson**. Well, it wasn't common knowledge at the time that I confronted you in the House.

Mr. **Mazzella**. Well, I'm sure that in my testimony before the House, it was apparent that that is exactly what my representations were, that he was—that the Department had authorized his prosecution for 1001.

Mr. **Anderson**. This was Mr. Conyers, Mr. Edwards and Mr. Bryant, and Mr. Bryant, the former prosecutor, asking you, "Did you have any leverage at all?"

Mr. **Mazzella**. Yes, and we did not, there was no leverage on Mayor Clark, none whatsoever. We did not have any leverage on him, he had no reason to lie to us, there were no lies, there was no prosecution of Mayor Clark.

Mr. **Anderson**. Well, he had no reason to lie to you. Did you have any reason for him to cooperate with you? He didn't have any reason to talk to you at all.

Mr. **Mazzella**. Well, why would he not cooperate?

Mr. **Anderson**. Well, if that was your view of the situation, why didn't you go to him on September 10 and say, "Mayor, help us here"?

Mr. **Mazzella**. Because the investigative step, as properly prescribed, would be to investigate this thing as fully as possible, without confronting witnesses through direct interviews. That is an established FBI procedure and it works.

Mr. **Anderson**. The investigative step was to gain leverage on Kevin Gordon before you confronted him with it.

Mr. **Mazzella**. That is absolutely correct.

Mr. **Anderson**. The investigative step was to gain leverage over Mayor Clark in the form of a recorded conversation that committed him before you confronted him.

Mr. **Mazzella**. That's correct.

Mr. **Anderson**. And that took 130 days.

Mr. **Mazzella**. Whatever it took, I don't know.

Mr. **Anderson**. Whatever it took.

Mr. **Mazzella**. Let me also explain that Mayor Clark did not learn that we had a recorded conversation of him at the time we interviewed him.

Mr. **Anderson**. By the end of those three interviews, he was not aware of that?

Mr. **Mazzella**. He was aware of it later and, again, I have to get into areas that I'm prohibited from testifying to. But he did learn about it later, not at the time we interviewed him and got his initial admissions to what we are discussing today. So, he didn't know we had a wire on him and he had no reason to lie.

Mr. **Anderson**. Agent Mazzella, am I correct in my perception that the FBI has one of the sky boxes in this auditorium and has had throughout these proceedings? Is there one of those booths up there that has been occupied——

Mr. **Mazzella**. Yes, there is a booth upstairs.

Mr. **Anderson**. I have no further questions.

Mr. **Mazzella**. And I might add, Mr. Anderson, that I have not been listening to testimony.

Mr. **Anderson**. I didn't suggest you had.

Mr. **Mazzella**. Right.

The **Chairman**. Is there additional redirect?

Mr. **Bryant**. May we approach the Chairman? The Chairman would like to visit off the record a moment.

[Discussion off the record.]

The **Chairman**. Back on the record.

Counsel, go right ahead.

Mr. **Bryant**. Agent Mazzella, at the beginning of the cross-examination of you by Mr. Anderson, he asked you some "did you hear" types of questions, and particularly one with regard to someone named Alberto San Pedro. With respect to the indictment of Alberto San Pedro that Mr. Anderson has referred to, didn't that indictment relate to Mr. San Pedro's hiring a telephone employee to find out whether a telephone was tapped?

Mr. **Mazzella**. Yes, it did.

Mr. **Bryant**. Isn't it also true that the telephone employee had no access to the contents of any wiretaps?

Mr. **Mazzella**. That's correct.

Mr. **Bryant**. And isn't it also true that there is no evidence that the telephone employee found out anything relating to the telephones of Mayor Clark or Waxy Gordon?

Mr. **Mazzella**. That is correct.

Mr. **Bryant**. In fact, does Alberto San Pedro bear in any fashion whatsoever on this matter today?

Mr. **Mazzella**. None whatsoever. If I might also add that that particular employee did provide a statement to the States Attorneys office, wherein he was directed to expose any other criminal activities relating to his guilty verdict, and he did not indicate anything whatsoever relative to this matter at hand.

Mr. **Bryant**. OK. Fine.

Now, I would like to draw your attention back to Respondent's Exhibit No. 51. I think it would be best to have you explain to the committee what that document is. I believe it's in front of you there.

Mr. **Mazzella**. Yes, I have it. I'm sorry, what was your question?

Mr. **Bryant**. Well, this is a document that makes reference to the fact that the Department of Justice has already authorized prosecution of Clark under Title 18, U.S.C. section 1001. Would you begin by explaining to the committee what this document is?

Mr. **Mazzella**. This document is simply a response to a request by our FBI Headquarters to justify placing a body recorder on Stephen Clark to record conversations with Judge Hastings. There were questions that arose from FBI Headquarters, wherein they wanted to receive further explanation as to why Mayor Clark should just not put in the grand jury and provide testimony in that regard, lock him into his testimony at that point and then go out and wire him up.

It was Miami Division's position that, by putting Mayor Clark into the grand jury, that we would in effect have a possibility of some sort of leak that would then jeopardize any covert investigation that might arise. As it turned out, there was apparently news media accounts of that testimony anyway.

So, this is simply a way of explaining to the FBI Headquarters, that has to approve of these things, that we had sufficient potential to lock Mayor Clark into his testimony through his own words on tape, and that if indeed he deviated from his statements or he lied relative to any further statements he made, we could then prosecute him under 1001, and that in turn would be some sort of inducement for him to continue cooperation.

Mr. **Bryant**. Agent Mazzella, the committee is going to be interested in knowing whether or not you had some kind of special leverage over Clark to make him testify in a way that would be detrimental to the judge. That would be the inquiry here, I think.

And the reason I ask you about this particular exhibit is that it makes reference to the fact that the Department of Justice has already authorized the prosecution of Clark under the title I read a moment ago. Now, first of all, tell us what is that title, Title 18, U.S.C. section 1001?

Mr. **Mazzella**. Section 1001 is a Federal statute, criminal statute that prohibits or makes it a crime for any individual to lie to a Federal law enforcement officer in the conduct of an investigation, wherein that lie precipitates action or reaction on the part of the Federal agency, and basically it is a felony under the Federal statutes.

Mr. **Bryant**. Now, as a general matter, you would not need special permission from the Department of Justice in Washington to work with the United States Attorney in prosecuting someone under that provision, would you?

Mr. **Mazzella**. No, we would generally work right with the U.S. Attorneys office locally.

Mr. **Bryant**. I mean, it is just a general part of your operation, that when somebody lies and violates that section, you can choose to prosecute them if you want to, isn't that correct?

Mr. **Mazzella**. Yes, that's correct.

Mr. **Bryant**. Then the question would be, why is there reference in this memorandum to the fact that the Department of Justice has already authorized the prosecution of Mayor Clark under this section, in the event that he were to lie?

Mr. **MAZZELLA**. The matter had already been referred to the Public Integrity Section at the Department of Justice. It's their decision to conduct any prosecutions, even under this particular statute, because now we are talking about a leak investigation and they have the prerogative in handling those types of investigations.

Mr. **BRYANT**. Are you then in this memorandum pointing out that his testimony already has been preserved, so to speak——

Mr. **MAZZELLA**. Yes.

Mr. **BRYANT** [continuing]. Inasmuch as you have authority, you had authority to go ahead and prosecute him under this section if you choose to do so, as you would in any other case?

Mr. **MAZZELLA**. That's exactly the point.

Mr. **BRYANT**. Notwithstanding the fact that this was a Public Integrity case that required special approval from Washington?

Mr. **MAZZELLA**. That is correct.

Mr. **BRYANT**. OK. We have no further questions.

The **CHAIRMAN**. Is there recross-examination?

RECROSS-EXAMINATION

Mr. **ANDERSON**. Just briefly.

Agent Mazzella, Mr. Bryant asked you about the San Pedro case and I think you indicated some familiarity with the charges against a man named Heinrich Kobetitsch, a Southern Bell employee, is that correct, sir?

Mr. **MAZZELLA**. Yes.

Mr. **ANDERSON**. You had examined those. Yet, when I questioned you this morning, you were not—not this morning, when I questioned you just a little while ago, you seemed to have a lesser recollection of some of the other charges. Let me post it again: Were you aware that Count 1 of that indictment included an allegation on July 15, Albert San Pedro was trafficking in recorded conversations that had been obtained through court-authorized surveillance?

Mr. **MAZZELLA**. No, I'm not aware of that, sir.

Mr. **ANDERSON**. If I now understand your testimony, after the judge had in his examination brought up Mr. Kobetitsch's name, we are aware of what that was, but we still aren't aware of the allegations in the San Pedro claim that deal with trafficking, is that correct?

Mr. **MAZZELLA**. You will have to repeat that question.

Mr. **ANDERSON**. Let me repeat it one more time.

Mr. **MAZZELLA**. OK.

Mr. **ANDERSON**. To the best of my knowledge, the name Kobetitsch first came into this proceeding when the judge was cross-examining Mr. Martinas. Do you recall that?

Mr. **MAZZELLA**. No, I don't. I wasn't here.

Mr. **ANDERSON**. You have had at some occasion an opportunity to check on the proceedings against Mr. Kobetitsch, have you?

Mr. **MAZZELLA**. Yes.

Mr. **ANDERSON**. When did you check that?

Mr. **MAZZELLA**. I checked on that last week, I think.

Mr. **ANDERSON**. Last week. Did you check on the rest of the San Pedro indictment last week?

Mr. MAZZELLA. No.

Mr. ANDERSON. No further questions.

The CHAIRMAN. Mr. Mazzella, let me ask a question or two, and then maybe other members of the committee would have a question.

I am confused, I guess, about what happened with Mr. Ferguson's testimony. In Respondent's Exhibit 55, which is this FD 302 that was done on February 28, over on the 6th page, you asked two questions or the FBI agents there asked two questions of Mr. Ferguson. First, number 15, "Did you ever hear from any conversation that you had with Steve Clark, that he Clark received information about an FBI investigation from United States District Judge Alcee Hastings?" and Ferguson replied, "Never received word from Steve Clark that Clark had received information about an FBI investigation by United States District Judge Alcee Hastings."

And then with reference to the fact that they only met once in 1984, when Clark was running for office. The next question, Ferguson evidently said, "No way was Alcee Hastings ever mentioned by me or Gordon or Clark or Morrison." So, he was pretty emphatic at the time you interviewed him here on the 28th of February that he did not believe that Hastings had talked to Mayor Clark.

In Respondent's Exhibit 50, which is your communication to the Director of the FBI, stating your strong belief that prosecution should go forward of Judge Hastings, you say, starting on page—I don't see that the pages are numbered, but at any rate—yes, here they are, on page 3 and then continuing on page 4, "Peter Ferguson would be expected to corroborate Clark's testimony relative to being requested by Clark to contact Gordon and arrange a meeting at the MOC," and then you go on and say he would corroborate other things as well.

Now, this is in May, right, the first of May?

Mr. MAZZELLA. That's correct.

The CHAIRMAN. Which all happened between the 28th of February and the first of May to persuade you that Mr. Ferguson would change his story and corroborate Clark's testimony?

Mr. MAZZELLA. Well, I'm not sure he would—I can't speak for Mr. Ferguson. I knew at the point that he gave a statement to the FBI that he was lying, because we know that from tape-recorded conversations he had with Waxy Gordon on December 18.

The CHAIRMAN. Right.

Mr. MAZZELLA. I would presume that—further, Mayor Clark also indicated that Peter Ferguson was present at the time of the disclosure. I would presume that Ferguson would testify truthfully at a subsequent trial or what have you, in view of the evidence that is already developed against him.

The CHAIRMAN. But you were persuaded still in May, when this was prepared, you were persuaded that he had lied when questioned about it by these two FBI agents?

Mr. MAZZELLA. Yes.

The CHAIRMAN. And in doing so, he had subject himself to potential prosecution?

Mr. MAZZELLA. Yes, that's quite possible.

The CHAIRMAN. But your assumption was that if it was actually brought into a court and he had to go under oath and perjure himself, that he would change that story and tell the truth?

Mr. MAZZELLA. Yes.

The CHAIRMAN. And that is what you were saying in here?

Mr. MAZZELLA. That's correct.

The CHAIRMAN. But you didn't have any further statement from him which would lead you to conclude that?

Mr. MAZZELLA. No, just the fact that he was recorded in a very revealing conversation, as you heard this morning.

The CHAIRMAN. When you wrote this May lst telefax or whatever you call this to your Director indicating that the FBI disagreed with the decision of April 4 not to prosecute and you felt that the judge should be prosecuted on this, was it for the purpose of just making a record for future reference, sort of a CYA kind of a memo to the file so that in case anyone is ever criticized, it wouldn't be you or wouldn't be the FBI, or was it written with the intention of getting this decision by the Justice Department revisited?

Mr. MAZZELLA. I think it is probably a little bit of both. I had hoped that there would be some reconsideration of the Department's decision and that, if they were made aware of all the consequences of the disclosure, that is, the impact that the disclosure had on all our pending investigations, and had a little better knowledge of the facts, that there might be some reconsideration.

Indeed, as I understand it from the teletype we received back from Headquarters, there had been some communication between FBI Headquarters and the Department, but their decision was still not to prosecute. I thought it was also very, very important to record the impact that the investigations or the discontinuance of these investigations had, so that we would have some future record of exactly what happened in these matters.

The CHAIRMAN. OK.

Are there other questions? Senator Specter?

EXAMINATION BY THE COMMITTEE

The VICE CHAIRMAN. Thank you, Mr. Chairman.

Special Agent Mazzella, when you say that Mr. Ferguson did not tell the truth, did you ever consider recommending a criminal prosecution against Mr. Ferguson on grounds of violating section 1001?

Mr. MAZZELLA. No, I can't say that I did, although that would certainly be a possibility.

The VICE CHAIRMAN. Well, why didn't you consider that, in light of the fact that had you undertaken that recommendation or that prosecution been held out to be a possibility, that Mr. Ferguson might have told the truth, as you saw it, to support your case against Judge Hastings, if in fact you had a case?

Mr. MAZZELLA. I don't really think his testimony, assuming even at that point that he told the truth, would have any change in the Department's position. There are very specific reasons why they declined, and I don't think it was because they didn't believe Mayor Clark. There were other reasons, and that's the reason they declined, so Ferguson's telling the truth or not is really not the factor in getting this thing prosecuted.

The VICE CHAIRMAN. Agent Mazzella, as I understand your memorandum of May 1, you were pushing pretty hard to get the Department of Justice to change its recommendation or to get the Federal Bureau of Investigation to urge the Department of Justice to change its recommendation, so I am a little perplexed by your answer to the Chairman that there was some element other than a real press on your part to get that prosecution decision or non-pros decision changed. Didn't you feel very strongly about getting this case prosecuted against Judge Hastings?

Mr. MAZZELLA. I wouldn't have committed this to paper if I didn't. You know, it was as very difficult position, having to reverse a decision by the Department, even as early as April 4.

The VICE CHAIRMAN. Now, did you ever—I'm sorry.

Mr. MAZZELLA. I must be candid and truthful that I didn't really think it would work, I didn't think there would be any way that the Department would reverse itself, but I thought it was worth a try.

The VICE CHAIRMAN. But you felt strongly enough about it to make the try?

Mr. MAZZELLA. Oh, yes.

The VICE CHAIRMAN. Did you ever get back a response to your request of May 1 to reverse that decision?

Mr. MAZZELLA. Yes, we got a response, I think it was probably within maybe two to three weeks after that from our FBI Headquarters that had made an inquiry of the Department of Justice relative to the contents of this teletype.

The VICE CHAIRMAN. Well, did the FBI then take it back to the Department of Justice and ask them to reverse their decision not to prosecute Judge Hastings?

Mr. MAZZELLA. I'm sorry, I've sort of lost you a little bit.

The VICE CHAIRMAN. Well, you said you got back a response from the FBI that the Department, as I understood you, had decided not to change its position.

Mr. MAZZELLA. Yes, that's correct.

The VICE CHAIRMAN. And my question to you, did the FBI follow your recommendation and in fact urge the Department of Justice to change its decision and to prosecute Judge Hastings?

Mr. MAZZELLA. They did, based upon the May 1st teletype that we sent. They then conferred with the Department and the Department's decision was still not to prosecute. FBI Headquarters then informed the Miami Division of the specific reasons why the Department would not prosecute.

The VICE CHAIRMAN. And you are not sure of the precise date when you were notified that the Department ruled on not changing its mind?

Mr. MAZZELLA. Right.

The VICE CHAIRMAN. It was two to three weeks after the May 1st memo?

Mr. MAZZELLA. I think so. I would have to research that a little bit to see.

The VICE CHAIRMAN. Could it have been after you talked to Judge Hastings on May 19?

Mr. **MAZZELLA**. I don't think so. Again, the recollection as to when that teletype came back from Headquarters, I don't remember.

The **VICE CHAIRMAN**. Special Agent Mazzella, why did you go to talk to Judge Hastings if you weren't trying to develop some information in support of your effort to have him prosecuted?

Mr. **MAZZELLA**. Because we were requested to do so by Public Integrity, by the Public Integrity Section. They were in the position of referring this matter to the Eleventh Circuit Court of Appeals. Their feeling was that the allegations should be rounded out and the judge given an opportunity to give his side of the story.

The **VICE CHAIRMAN**. Well, wasn't that an aspect of the continuing investigation as to Judge Hastings?

Mr. **MAZZELLA**. Well, it might be termed that, but I think basically the main purpose was just to get his statement. At that point, unless he confessed, I mean maybe there might be some other recourse, but at that point there was no active investigation from a criminal point of view.

The **VICE CHAIRMAN**. So, you think you had been notified that the Department of Justice had decided not to change its decision on not prosecuting Judge Hastings before you questioned him on May 19?

Mr. **MAZZELLA**. I believe so.

The **VICE CHAIRMAN**. But you're not sure?

Mr. **MAZZELLA**. I would have to look at the date of that teletype. I just don't remember.

The **VICE CHAIRMAN**. Do you have it handy?

Mr. **MAZZELLA**. No, I don't have it with me. If I recall, it may have been referred to in the testimony before the House. There might be a copy of it in those materials.

The **VICE CHAIRMAN**. Well, we will look for it to see if we can find it now. But if you were doing this solely for the Eleventh Circuit Investigating Committee, you would not consider that a matter of investigation which would warrant an answer to Judge Hastings that you were in fact investigating him, in response to his question?

Mr. **MAZZELLA**. That would be my feeling.

The **VICE CHAIRMAN**. Well, let me ask you this, Special Agent Mazzella: Would there be some circumstance where you would feel justified in saying to Judge Hastings that you were not investigating him, in response to his question, when in fact you were investigating him?

Mr. **MAZZELLA**. That could be a situation as well.

The **VICE CHAIRMAN**. Well, under what circumstance could that be your approach?

Mr. **MAZZELLA**. Probably in those circumstances to see if there might be a possibility of soliciting additional information from a subject or a target, you would not want to disclose that that person is the subject of an investigation.

The **VICE CHAIRMAN**. Well, would you consider it proper to say to a man under investigation, in response to a direct question by him, that he was not under investigation, when in fact he was?

Mr. Mazzella. It would depend on the situation, but in certain circumstances I could see where I would not want to disclose the fact that the person is the subject. It just depends.

The Vice Chairman. Well, under what circumstance in this sequence of events could you justify telling him something that wasn't true?

Mr. Mazzella. In this particular circumstance?

The Vice Chairman. Yes.

Mr. Mazzella. As I mentioned, if there is no criminal investigation of the person, then he is not the subject of an investigation.

The Vice Chairman. Then you are telling him the truth when you say he is not under investigation. Well, we will look for the date, Special Agent Mazzella, perhaps we can find it and I can revisit this before you are excused.

Thank you very much.

The Chairman. Senator Leahy?

Senator Leahy. Mr. Chairman, I have just a couple of questions of Mr. Mazzella I want to ask.

You have talked about Mayor Clark and, as I recall your testimony, you said he was not under investigation, is that correct? You did not have an investigation under way of Mayor Clark?

Mr. Mazzella. That is correct.

Senator Leahy. Has the FBI ever investigated Mayor Clark for any reason, to your knowledge?

Mr. Mazzella. At that particular time? Are we talking about 1985?

Senator Leahy. We are talking about the time in question, at the time you were talking with Judge Hastings and asking him questions.

Mr. Mazzella. He was not under investigation at that time.

Senator Leahy. Had he been——

Mr. Mazzella. No.

Senator Leahy [continuing]. By the FBI?

Mr. Mazzella. No.

Senator Leahy. Has he been subsequently?

Mr. Mazzella. There has been an allegation subsequently—again, I can't remember the specific date, but it was substantially after this particular matter. The allegation was reviewed and investigated and it was totally unfounded and, you know, we did not do anything further with it.

Senator Leahy. At the time in question, had any law enforcement agency investigated Mayor Clark, to your knowledge?

Mr. Mazzella. Not to my knowledge.

Senator Leahy. Have you subsequently heard that any had at that time?

Mr. Mazzella. I have not heard of any other agency investigating him.

Senator Leahy. Now, the 1001 authority you had to prosecute Mayor Clark if he gave a false statement, is that a usual thing, if you are going to go out and ask a question of somebody, do you get authority first that you can prosecute them if they tell you something wrong?

Mr. Mazzella. No, it is not a usual circumstance.

Senator Leahy. Then why did you have it in this one?

Mr. MAZZELLA. Because of the sensitivity of the investigation, I would say, we wanted to make sure that, you know, there was no misunderstanding on his part that, you know, he should be truthful.

Senator LEAHY. Oh, so you told him that you have authority to prosecute him if he didn't tell you the truth?

Mr. MAZZELLA. No, we didn't say that. We just indicated to him that it would be or could be a crime to lie to an FBI agent.

Senator LEAHY. Yes, but that you could say to anybody.

Mr. MAZZELLA. Yes.

Senator LEAHY. If any person in this room—I mean that is just a fact.

Mr. MAZZELLA. It is, right.

Senator LEAHY. Do you always say that to somebody you are talking to or asking questions of?

Mr. MAZZELLA. Sometimes, it just depends on what the circumstances are.

Senator LEAHY. But do you say it to them, whether or not you have gotten authority—I mean you don't have to get special authority to prosecute under 18, section 1001, just to advise people that it is against the law to lie, is that correct?

Mr. MAZZELLA. That's correct.

Senator LEAHY. And you told people that it is against the law, even when you have not had prior prosecutorial authority on them?

Mr. MAZZELLA. There have been occasions when I have, yes.

Senator LEAHY. Was there any other reason you had prior prosecutorial authority on Mayor Clark?

Mr. MAZZELLA. None.

Senator LEAHY. OK.

Mr. MAZZELLA. May I just expand on that?

Senator LEAHY. Sure.

Mr. MAZZELLA. Again, this authority sounds a lot worse than it is. The bottom line was the Department would be willing to prosecute if he lied, if we found that in all subsequent contacts and his cooperation, he lied. That was never the case, therefore the authority was really meaningless.

Senator LEAHY. Now, as I understand your answer to an earlier question here today, you said you had not reviewed the testimony of any of the witnesses who have appeared before this special Senate panel, is that correct?

Mr. MAZZELLA. Correct.

Senator LEAHY. Now, what prompted you just last week to check on the status of the Kobetitsch matter?

Mr. MAZZELLA. I was requested to by one of the staff members.

Senator LEAHY. By one of the Senate——

Mr. MAZZELLA. House staff members.

Senator LEAHY. By the House staff members. Did any of the FBI witnesses advise you to do that?

Mr. MAZZELLA. No.

Senator LEAHY. Kobetitsch, how old a case is that?

Mr. MAZZELLA. I believe the case was initiated in 1985, and I believe in 1985 and I believe there were prosecutions possibly in the summer of 1986.

Senator LEAHY. And why were you asked to review it?

Mr. MAZZELLA. Why was I asked to review it?

Senator LEAHY. Yes.

Mr. MAZZELLA. Are you talking about the Kobetitsch investigation?

Senator LEAHY. Yes.

Mr. MAZZELLA. If I recall, there had been some question arise as to the possibility of the FBI—that Kobetitsch may be involved in the FBI's—in this particular leak matter.

Senator LEAHY. So, the question arose where?

Mr. MAZZELLA. Last week?

Senator LEAHY. You mean among the witnesses here?

Mr. MAZZELLA. No, during the—I don't know, during testimony, during some sort of testimony.

Senator LEAHY. You said something about the FBI has a sky box here.

Mr. MAZZELLA. Yes.

Senator LEAHY. I often thought of that at sports arenas, I don't know, maybe we are getting into that category in this matter. Where is the FBI sky box? I wasn't aware of that myself.

Mr. MAZZELLA. Well, there is a number of sky boxes around here. Some of them are right up here, I guess [indicating].

Senator LEAHY. Yes. They have my good side, I am told.

They had that all the way through?

Mr. MAZZELLA. Sorry?

Senator LEAHY. Has the FBI had that all the way through these proceedings?

Mr. MAZZELLA. I would presume so.

Senator LEAHY. But you don't know whether they did or not?

Mr. MAZZELLA. Yes, they do have a sky box.

Senator LEAHY. But you don't know whether they have had it all the way through the proceedings or you do know?

Mr. MAZZELLA. I don't—well, I don't know, because it has been going on for quite a while. I presume they do.

Senator LEAHY. How did you know they had one now?

Mr. MAZZELLA. Because I have been up in them.

Senator LEAHY. Watching witnesses, listening to testimony?

Mr. MAZZELLA. Yes, because there are controls up there, some of the rooms don't have any speakers.

Senator LEAHY. I see.

Mr. MAZZELLA. I was——

Senator LEAHY. But have you been up there listening to witnesses?

Mr. MAZZELLA. No, I haven't.

Senator LEAHY. Or observing witnesses?

Mr. MAZZELLA. I haven't. Once in a while you would get up to stand up a little bit, you can hardly even see off the ground, unless you lean over.

Senator LEAHY. I see. Now, you pushed very hard for the Hastings prosecution, as you have indicated here. Is that a fair assessment?

Mr. MAZZELLA. I didn't hear the first part.

Senator LEAHY. You pushed hard for the prosecution of Judge Hastings, is that a fair assessment?

Mr. **Mazzella**. Yes.

Senator **Leahy**. And the Department then reversed their earlier decision and decided to go ahead and prosecute him, is that correct?

Mr. **Mazzella**. No, they didn't agree to prosecute him.

Senator **Leahy**. Originally, the Department was not going to prosecute Judge Hastings.

Mr. **Mazzella**. Right.

Senator **Leahy**. You urged them to reconsider that decision, is that correct?

Mr. **Mazzella**. Yes.

Senator **Leahy**. And then ultimately they reconsidered the decision and brought a prosecution.

Mr. **Mazzella**. No, they never agreed to prosecute Judge Hastings. What they agreed to is simply referring the matter to the Eleventh Circuit.

Senator **Leahy**. How do you feel about the case, though, where he was prosecuted and the jury acquitted him, how do you feel about that?

Mr. **Mazzella**. I have no problem with that.

Senator **Leahy**. Were you disappointed at the time?

Mr. **Mazzella**. No.

Senator **Leahy**. Do you have any feelings one way or the other?

Mr. **Mazzella**. Not really. I wasn't involved with the investigation and it really didn't have any impact on anyone whatsoever.

Senator **Leahy**. OK.

Mr. **Mazzella**. As a matter of fact, if I might explain——

Senator **Leahy**. Sure.

Mr. **Mazzella**. When we had the Title III arise in the ILA case and Judge Hastings was the sitting judge at that time, Mr. Martinez and I discussed, you know, bringing this thing, bringing the Title III to Judge Hastings and we felt that there was really no reason not to, in view of the fact that he had been acquitted and, you know, there was no negative perception from that.

Senator **Leahy**. Let's go back to when you met with Mayor Clark. Do you want to go over that conversation a little bit? You came in and you told him about section 1001.

Mr. **Mazzella**. Right.

Senator **Leahy**. You referred to it as Title 18—what words did you use?

Mr. **Mazzella**. I don't recall specifically, other than to simply say that he was not the subject or target of the investigation, that we wanted to talk to him as a witness, that he would need to be truthful because, if he's not, it might be a crime to lie to an FBI agent.

Senator **Leahy**. Did you advise him that there had already been authorization to prosecute him if he did lie?

Mr. **Mazzella**. No.

Senator **Leahy**. Did you advise him that—or did he say anything about getting a lawyer? You are not required to tell him that he has the right to a lawyer?

Mr. **Mazzella**. That's correct.

Senator **Leahy**. Although if he had asked to speak to a lawyer before he answered any further questions, what would you have done? Do you have a procedure for that?

Mr. **Mazzella**. We would have—he could have told us to get out of his home and we would have just gotten up and left. You know, whatever he wanted to do, he was just a witness, that's all.

Senator **Leahy**. OK.

Thank you, Mr. Chairman.

The **Chairman**. Are there other questions? Senator Rudman?

Senator **Rudman**. Mr. Chairman, picking up on Senator Specter's examination of the witness.

Agent Mazzella, I believe, if I have the record in front of me, that your Telex up to John Kelly is dated May 1, in which you say at the end of it, "PIS says requested FBI interview Hastings relative disclosure, Miami will hold interview in abeyance until it receives final prosecutive opinion re Hastings matter."

I believe, unless there is some interim document we don't know about, that that was on August 28, 1986, in a memorandum from Eric Holder and John Campbell to Gerald McDowell, and that says "declination memoranda." Is that the document you are talking about?

Mr. **Mazzella**. No.

Senator **Rudman**. It's something else?

Mr. **Mazzella**. It is another document that came out of our headquarters.

Senator **Rudman**. And what did that say?

Mr. **Mazzella**. That the Department—it listed seven or eight specific reasons why the Department of Justice had declined prosecution. I can almost relate them, but I would have to——

Senator **Rudman**. And what, rejected your appeal, your request?

Mr. **Mazzella**. Right.

Senator **Rudman**. And yet the final decision in this wasn't made for several months thereafter?

Mr. **Mazzella**. Well, at least on paper, officially.

Senator **Rudman**. I am just curious as to why you decided to go in and interview the judge at the time you did, in the absence of some specific instruction to do so. You say you did have instructions?

Mr. **Mazzella**. I think it was because we received final notification from our headquarters, and without that document in front of me, I'm afraid I am—I don't want to say something that's wrong, but I think we received that notification and that is why we went to interview Judge Hastings.

Senator **Rudman**. You don't have that readily available?

Mr. **Mazzella**. As I say, I'm pretty sure it was mentioned in the House testimony and may have been even mentioned by Mr. Martinez in his testimony before the House. It might be alluded to there.

Senator **Rudman**. Agent Mazzella, I just want to go back to one other point here, because it troubles me and it obviously troubles other members of this panel and maybe you can help us out, and that is this statement in your hand-carried message to Walter Scheuplein, dated March 3, 1986.

Mr. **Mazzella**. March 3, 1986?

Senator RUDMAN. March 3, 1986, in which you state all of your reasons on Clark to the Department of Justice. It says DOJ has already authorized the prosecution of Clark under Title 18, U.S.C. section 1001. I believe that your testimony is that you had specific authorization, without further permission, to prosecute him.

Mr. MAZZELLA. Right.

Senator RUDMAN. Not anybody else?

Mr. MAZZELLA. I can only speak specifically about him. It's possible that we also had the authorization for the other two or three individuals.

Senator RUDMAN. Well, that's really not important to my question, but I was just curious if there was somebody else. At any rate, you're a lawyer, I believe——

Mr. MAZZELLA. Yes.

Senator RUDMAN [continuing]. The member of the bar of several States.

Mr. MAZZELLA. Right.

Senator RUDMAN. Sitting where I used to sit many years ago, if somebody sent to me and it read, "The Department has already authorized the prosecution of Clark under Title 18," I would assume that there was a strong suggestion or even a statement that probable cause existed. I would never read this to be a contingent authorization based on a subsequent crime. Is that an unfair reading of that?

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Mr. MAZZELLA. If you were not involved at all in the investigation and just picked this up and read it, you would be right. You know, a totally objective view of this teletype would indicate there was authorization to prosecute. But the paper flowing between FBI Headquarters and Miami involved people who were very familiar with the case. This teletype is simply in many respects a recapitulation of conversations that we had with Headquarters on the telephone, but I can assure you, Senator, the only authorization dealt with possible lies that might flow from an interview of Mayor Clark. There was nothing, nothing at all before that interview upon which we could even dream of prosecuting Mayor Clark.

Senator RUDMAN. I am not suggesting for a moment there was, but I am interested in your answer because of an answer you just gave to Senator Leahy a few moments ago. You said to Senator Leahy at one point in one of your answers that, after all, "authorization was meaningless."

Mr. MAZZELLA. Yes, that's correct.

Senator RUDMAN. Well, if it was, why put it in the memorandum?

Mr. MAZZELLA. Because this memorandum precedes the interview.

Senator RUDMAN. I understand that.

Mr. MAZZELLA. And after the interview, after we had conducted all our investigation and found Mayor Clark to be unequivocally truthful, without a doubt, there was no need for any further authorization, he had not lied, and so, really, the authorization is a meaningless statement.

Senator RUDMAN. Agent Mazzella, you were in the Bureau for 25 years.

Mr. MAZZELLA. Right.

Senator RUDMAN. You have interviewed probably thousands of witnesses, and you are intimately familiar with this case——

Mr. MAZZELLA. Yes.

Senator RUDMAN [continuing]. This particular aspect of the case.

Mr. MAZZELLA. Yes, that's right.

Senator RUDMAN. Do you have any explanation in the course of your investigation that the Mayor has a clear recollection of Judge Hastings making the statement in question after a speech, coming off the podium, when all of the evidence is that (a) that was physically difficult, if not impossible, (b) that the judge left by the back entrance, and (c), most importantly, the wiretap revealed the Mayor requesting a meeting at 8:58 in the morning? Do you have any explanation for that?

Mr. MAZZELLA. My only explanation is that Mayor Clark was mistaken as to the sequence of events that occurred on the morning of September 6.

Senator RUDMAN. How long after these events did you examine Mayor Clark in terms of his knowledge?

Mr. MAZZELLA. It would have been three months, almost four months.

Senator RUDMAN. Do you believe, Agent Mazzella, based on your long experience interviewing witnesses, that someone as astute—and he impressed me as an astute gentleman—as Mayor Clark could make that kind of an error, when you are talking about a Federal judge coming off a platform, walking into an audience, shaking hands and whispering a message versus telling him that at 8:15 or 8:30 in the morning?

Mr. MAZZELLA. Yes.

Senator RUDMAN. I mean, I want your view, because we are trying hard to give Judge Hastings a fair hearing and you are an expert and, although you were involved in investigating this case, you must have an opinion. How do you explain that four months later?

Mr. MAZZELLA. I will explain that, if you will bear with me, if I can go through some of the things that happened, I think it will help.

In answer directly to your question, yes, mistakes are made by witnesses, they are always made. I mean, unless you have got somebody on a body recording, facts are lost, explanations are clouded, events are somewhat misguided as far as recollection is concerned. But I think even beyond all that, we need to examine the motive for Mayor Clark telling Waxy Gordon what happened, and if you will indulge me, if I can do that——

Senator RUDMAN. You may. I have asked the question, so I would appreciate your answer.

Mr. MAZZELLA. We know that, on the morning of September 6, when Mayor Clark received this information from Judge Alcee Hastings, we have to examine what he did. What did he do?

OK. The first thing he does is he calls Peter Ferguson up, tells him get Waxy Gordon down to the Miami Outboard Club, I want to see him. He goes to the Miami Outboard Club. Why does he go there? He goes there because he is concerned about himself. He's not going there to warn Waxy Gordon about anything. All his statements that he has made to the FBI, what Waxy Gordon tells us he made to the FBI, all the recordings we've heard, all go to the point that Mayor Clark wants to find out if the information is correct and accurate.

He asks Waxy, "Are you using my name in Hialeah, are you doing anything in Hialeah?" Why would he say that at the spur of the moment, unless he received that information that morning from a source that he didn't know its reliability? He doesn't know Judge Hastings, he doesn't have any idea how Judge Hastings got this information, but he wants to go check it out.

Now, if this thing came from any other place, if this thing came from any other source, he wouldn't be going down to talk with Waxy Gordon to confirm something, he would already know it's true, he'd back off, stay away from Waxy Gordon and forget the whole thing. But his actions, his spontaneous actions are right on the nose. He gets the information, he runs out and checks it out, and those are the types of things that we need to examine. It is not the fact that the call was made at 8:58 or that it was later, represented as coming after a speech or before a speech. Mayor Clark has been to speeches, you know, ad infinitum, I'm sure, and he could have easily been mistaken about the timing an utterance of that magnitude that was made to him, causing him to run out and check it out.

Senator RUDMAN. And you believe it is a normal error for a witness to make the kind of an error that Mayor Clark has made in terms of the setting, one setting relatively private, with a small group of people milling about, as opposed to a formal setting after a speech?

Mr. MAZZELLA. Yes, I'm firmly convinced of that, and I've seen it happen in other cases.

Senator RUDMAN. And you haven't considered the possibility that Mayor Clark might well have heard that from somebody else the night before or early that morning?

Mr. MAZZELLA. I have.

Senator RUDMAN. You have?

Mr. MAZZELLA. Believe me, you know, we have——

Senator RUDMAN. Did you interview the people who might have been possible sources of that leak?

Mr. MAZZELLA. We have interviewed one potential source, Tom Dowd. I did not personally speak to any other individual, so I can't tell you what those people said. I know Tom Dowd was not the leak. He didn't even know about the wiretap or the investigation.

I can tell you that if—and I know that the defense in this case is that there may have been a leak out of the FBI to Judge Hastings——

Senator RUDMAN. It wouldn't have been the first time, Agent Mazzella.

Mr. MAZZELLA. I know that. If the leak were the FBI, if the leak came from the FBI to Mayor Clark, he wouldn't have gone down to confront Waxy Gordon. He would have known that the information was true. Why go down and tell somebody what you know, if you know it's true? He didn't go down there to warn Waxy, he went down there to find out if it was true.

Senator RUDMAN. Finally, Agent Mazzella, your best answer that you can recollect from that time, with all that had gone on in the

Miami area, including Judge Hastings' first trial and his acquittal in that trial, is it your testimony that, to the best of your knowledge, you and the people working with you had no personal animus towards Judge Hastings?

Mr. MAZZELLA. Absolutely not.

Senator RUDMAN. Thank you.

Mr. MAZZELLA. I can't say that emphatically enough.

Senator RUDMAN. Thank you.

The CHAIRMAN. Other questions? Senator Bryan?

Senator BRYAN. Agent Mazzella, the point at issue here as to whether or not the statement was before or after the breakfast speech, because of a time sequence, it seems to be somewhat in conflict with the Mayor's testimony, at least as taken at a later point in time.

At 8:58, as I recall, is the time that the record reflects that the conversation between the Mayor and Mr. Ferguson, to the effect, "Get Waxy Gordon, I want to talk to him this morning at 11:30 at the MOC," I think is the way they referred to it.

Mr. MAZZELLA. Yes.

Senator BRYAN. Am I correct factually on that?

Mr. MAZZELLA. Yes, you are.

Senator BRYAN. Would you refresh my memory: What evidence do you have that indicates that 8:58, that benchmark is absolutely accurate, or is it possible that 8:58, although you believe that to be the time, that somehow, in the investigation and the recordation of the time frame, could there be a mistake made there, rather than a mistake in the Mayor's testimony? Do you understand the thrust of my question?

Mr. MAZZELLA. Yes. I believe I could tell you there is a possibility there was a mistake as to time, but there isn't. The call was recorded——

Senator BRYAN. Would you explain that? I don't want to go into great length, but just encapsulate, if you will, what makes you convinced, as you seem to be, that 8:58 is indeed the accurate time, that that is the benchmark or the frame of reference from which we must proceed in analyzing the evidence? And again, if you support the thesis of the House managers in this case, it is the Mayor that is mistaken, and you have offered to Senator Rudman your explanation as to how that might have occurred, but hone in, if you will, on the 8:58 time frame for me, please.

Mr. MAZZELLA. Well, in-coming telephone calls are recorded by the monitoring agent who records the exact time that a call is received, he will put that in his notes and then there will be a log. He will put it in his log, I'm sorry to say, and then a brief explanation as to what happened. That would be consistent with out-going calls that Waxy made subsequent to this particular telephone conversation, so I think the time——

Senator BRYAN. What was the time frame there, again, to refresh my memory, of the Waxy call?

Mr. MAZZELLA. I believe Waxy made or received an in-coming call, I don't remember, but probably it was around 9:15, 9:20, after that. I would have to look at these logs. It has been a while. But at least we know that it probably occurred before 9:15 in the morning.

Senator **Bryan**. In examining that log, you are satisfied by the sequence of any information recorded in that log prior to 8:58, and that information which may be recorded after 8:58, that indeed 8:58 is the correct time that there was not an inadvertent transposition of a number or somebody looked at his watch—it would not be the first time in the recorded history of civilization that somebody has recorded an erroneous time, I'm sure, and that is what I am trying to ascertain in terms of your own satisfaction, that that 8:58 is indeed accurate beyond a reasonable doubt.

Mr. **Mazzella**. I'm satisfied that it is.

Senator **Bryan**. Thank you.

The **Chairman**. Senator Pryor, did you have a question?

Senator **Pryor**. Yes, Mr. Chairman.

Do you know if it has been ascertained and stipulated that Mayor Steve Clark had a regular golf foursome with some fellow FBI agents? Now, do you know if there is a certain day of the week that they played on? Did they play Sunday afternoon, Saturday morning, Thursday afternoon or Wednesday—do you know if there was a regular scheduled time?

Mr. **Mazzella**. I believe that they generally played on weekends, Saturday or Sunday.

Senator **Pryor**. You don't know if they, for example, you don't know if they happened to play on Thursday afternoon, September 5, you don't know if there was a golf game with Mayor Clark and some FBI agents?

Mr. **Mazzella**. No.

Senator **Pryor**. The MMAP awards was September 6, on Friday, so we don't know if there was an afternoon golf game the day before, do we?

Mr. **Mazzella**. The only thing I could suggest as one possibility—I don't know personally. Perhaps the progress reports for September 5 might have some information in there about Mayor Clark preceding the 6th. I don't know, maybe there's something on that particular day that we could hone in on, but to my personal knowledge, I don't recall anything.

Senator **Pryor**. If there is any information, Mr. Chairman, would it be possible for the agent to supply that to the committee?

Mr. **Mazzella**. I will review that.

Senator **Pryor**. Thank you, sir, very much.

The **Chairman**. We would appreciate it.

Senator **Pryor**. That's all, Mr. Chairman.

The **Chairman**. Any other questions? Senator Lieberman?

Senator **Lieberman**. Thank you, Mr. Chairman.

Special Agent Mazzella, I am perplexed, as I guess other members of the committee are, about this sequence of time, and I am because it seems to me that you reached a conclusion that Judge Hastings was the source of the leak here. At the center of that conclusion has to be the testimony of Mayor Clark. In fact, as I listen to this case, everything else builds off of that. We have a conversation of Clark with Bonehill, we have various other references, but it all comes back to Mayor Clark saying to Waxy Gordon that Judge Hastings gave him this information, so his credibility is at the root of all this, and yet at an essential point—you know, he sat right where you are and he couldn't have been more specific about the fact that he came off the podium and spoke to the judge after the speech, after the program.

I know earlier, he indicated that there was just one factor, the time was just one factor and I guess you explained that. Let me ask you—and I gather that your conclusion is that this exchange occurred before the program began, is that right?

Mr. **Mazzella**. That would be my conclusion.

Senator **Lieberman**. That would be your conclusion.

Mr. **Mazzella**. Could I also say that the Mayor has not deviated from that statement throughout the proceedings.

Senator **Lieberman**. Right.

Mr. **Mazzella**. He has testified to it before grand juries under oath, before the House hearings, I presume before this committee, and to us in our initial interviews.

Senator **Lieberman**. Right.

Mr. **Mazzella**. I think it's probably something that has been fixed in his mind and he doesn't want to deviate from that particular impression. He is wrong about the time, but in my opinion and in all the evidence we have acquired and everything that we have looked at, he has no motive to lie, he has—I mean, if he is going to lie about something, why not pick another name, why pick Judge Alcee Hastings as the person who gave him the information?

Senator **Lieberman**. Do you want me to play the devil's advocate? Now, you know that one of the other theories here is that possibly somebody within the FBI gave him the information, they were his friends and he happened to run into the judge who he may have known from the FBI agent was overseeing this tap, and that was the logical other name to use when forced to do that.

Mr. **Mazzella**. But why go to Kevin Gordon and tell him that Judge Alcee Hastings gave him the information?

Senator **Lieberman**. Well, the reason I think he might go to Kevin Gordon is because in fact, if we carry this devil's advocate role, somebody else did tell him that he was the subject of an investigation, and he went by his own—as he said by his own testimony, he went really too threaten Gordon to stop it. I didn't even sense that he wanted to know—he didn't go for the purpose of investigation to see whether it was true or not, he went to stop Gordon from misusing his name.

Mr. **Mazzella**. Well, if you look at his testimony or at least his interview with the FBI and what Gordon told the FBI was that the first thing he asked Gordon is, "Are you using my name in Hialeah? If you are, stop it."

Senator **Lieberman**. Sure, but again——

Mr. **Mazzella**. But if he got that from the FBI, he wouldn't have to go to Gordon and say, "Are you using my name in Hialeah." He would know he was using his name, why bother going? Why bother putting himself on the spot with Gordon, whom he knows is already under investigation? Then, on top of that, why use the judge's name, a name that he knew would invoke some tremendous interest by law enforcement agencies if, in fact, his disclosure were ever made known to the FBI?

Senator **Lieberman**. I might ask another question. I thought of this when I heard Mayor Clark, why did he feel obliged to give any source to Waxy Gordon?

Mr. **Mazzella**. Exactly. He had no obligation to do that.

Senator **Lieberman**. Therefore, again, maybe just throw out Judge Hastings' name as a way to throw them off the track of who really gave Mayor Clark the information.

Mr. **Mazzella**. Well, I know what you're saying, but I have struggled with this, we've all struggled with it——

Senator **Lieberman**. I know you have, that is what we are doing now, that is why I ask you these questions. Let me ask you this—a couple of questions. One is, I don't think the program for that meant breakfast. It starts at 8:30. There's some indication they ran a little bit behind.

If in fact—and again, this is hard to time, we're talking about something way back, but you oversaw the investigation. If in fact, the communication between Judge Hastings and Mayor Clark occurred before the breakfast, as you suspect it did, then we have to assume that Mayor Clark went to a phone, and called Peter Ferguson, who then by your records, which you trust, at 8:58 called Waxy Gordon. I would say that there was a chance that Mayor Clark, therefore, was seated late at the breakfast.

Was there ever any investigation of that or indication of that? In other words, we know he was there early, because the Monseigneur talked to him and Judge Hastings before the breakfast. If the communication occurred at that point, just looking for something to put here, is there any indication that Mayor Clark sat down late for breakfast that morning?

Mr. **Mazzella**. The only thing I can tell you is based upon what the witnesses have told us. It's possible that the mayor received his awards or his award, that is, and that Judge Hastings' speech occurred late. There is no question about that. It's quite possible that the disclosure occurred right around that particular time. I mean, it's——

Senator **Lieberman**. Which might that time have been? You mean before breakfast?

Mr. **Mazzella**. Before the speech. I don't know if they had breakfast as such.

Senator **Lieberman**. Well, the program started at 8:30—I'm sorry. Right. I'm saying breakfast. But the program theoretically according to the material that we have in our file started at 8:30. In any case, in your investigation, you didn't pursue the question of trying to follow Mayor Clark essentially around that hotel that morning?

Mr. **Mazzella**. Well, we did talk to three, four, five individuals, and no one can make—had any recollection of what happened.

Senator **Lieberman**. Of exactly where he was?

Mr. **Mazzella**. Right.

Senator **Lieberman**. Let me ask you this.

You concluded Judge Hastings was the source of the leak. Did you ever reach a conclusion about what his motive was in leaking the information?

Mr. **Mazzella**. A factual determination? I could give you my——

Senator **Lieberman**. Or a personal determination. I presume you didn't reach a factual one because he obviously denies that he was the source.

Mr. MAZZELLA. My opinion is that Judge Hastings was concerned about Mayor Clark being dragged into the investigation through Kevin Gordon, and because of his prior problems, his own personal problems, he decided that it was time to change the course of the investigation.

Senator LIEBERMAN. I don't understand. Say some more about that. I don't know what you mean.

Mr. MAZZELLA. My feeling is, my gut feeling is that Judge Hastings didn't want to see the mayor brought into an undercover operation.

Senator LIEBERMAN. Because he was a public official?

Mr. MAZZELLA. Right.

Senator LIEBERMAN. Just because he was a public official? Did you have any reason to believe that they were close friends?

Mr. MAZZELLA. No.

Senator LIEBERMAN. Or did you have any reason to believe they were close political allies?

Mr. MAZZELLA. No.

Senator LIEBERMAN. So——

Mr. MAZZELLA. My feeling is that Judge Hastings acted upon his own belief that Mayor Clark would be injured by this investigation, and because of his own problems in the past that he felt it was necessary to warn Judge Hastings as he did.

Senator LIEBERMAN. To warn Mayor Clark?

Mr. MAZZELLA. I'm sorry. To warn Mayor Clark as he did.

Senator LIEBERMAN. One final series of questions, and that is just to clarify something you said earlier. I'm curious about the extent to which you pursued any other sources of this leak of this information. You've indicated that Tom Dowd was interviewed on that question, and you reached the conclusion he was not the source of the leak.

You indicated that you didn't know of anybody else that was. You didn't interview anybody yourself, but you did in fact oversee this investigation. So I wondered to the best of your recollection, was any source of the leak besides Judge Hastings and Tom Dowd pursued, interviewed?

Mr. MAZZELLA. No.

Senator LIEBERMAN. Did you, for instance, ever interview the couple of FBI agents who were regular golfing partners of the mayor's? I know that's one of the themes that's been developed here.

Mr. MAZZELLA. I did not, no. I don't they were specifically interviewed relative to this matter.

Senator LIEBERMAN. To the best of your knowledge, they weren't interviewed?

Mr. MAZZELLA. No.

Senator LIEBERMAN. Thank you.

Mr. MAZZELLA. I can say that as far as the integrity of the investigation and the scope of the investigation that we were, based upon all the evidence, including some of the information that I'm not testifying to for obvious reasons, pointed directly at Judge Hastings. I don't to this day think there was any other explanation to what happened.

Senator **Lieberman**. And that's based, again in my mind as I hear this, primarily on Mayor Steve Clark, and that——

Mr. **Mazzella**. It is based on his testimony, but the testimony has been corroborated. In my opinion, it has been thoroughly corroborated.

Senator **Lieberman**. By? By people to whom you spoke?

Mr. **Mazzella**. And by investigative technique.

Senator **Lieberman**. OK. That's where we—OK. Thank you.

The **Chairman**. Senator Specter has some additional questions.

The **Vice Chairman**. Yes. Well, thank you, Mr. Chairman.

Agent Mazzella, the memoranda which we were searching for that would shed light on the questions that I'd asked you before was found by counsel for the House managers, and then virtually simultaneously Mr. Anderson also found it, and I'd like to ask you to take a look at a couple of memoranda here, if you would.

These appear at page 1083 of that transcript, and this is the transcript of the House Committee on the Judiciary Hearings.

Mr. **Mazzella**. I'm sorry. Page 1083?

Oh, I see it marked. OK.

The **Vice Chairman**. Mr. Mazzella, I want to give you an opportunity to review that because these are significant questions, but perhaps I can abbreviate the time if I pinpoint you to specific matters.

My first question to you, Special Agent Mazzella, is that had you reviewed these two specific documents in advance of testifying here today?

Mr. **Mazzella**. No. I hadn't reviewed——

The **Vice Chairman**. We're now talking about—well, why don't you identify the two documents?

Mr. **Mazzella**. OK.

The **Vice Chairman**. Page 1083?

Mr. **Mazzella**. OK. 1083 is a teletype from—sometimes I have trouble reading this to—from FBI headquarters to Miami dated——

The **Vice Chairman**. May 20, 1986.

Mr. **Mazzella**. Dated May 19, 1986. And then there's——

The **Vice Chairman**. Dated May 19 or 20?

Mr. **Mazzella**. No. It's May 19. You have to look up on top of the teletype. If you come down where it says P19.

The **Vice Chairman**. Well, there's a date five lines down which says date 20th of May. Then I see you referring down to five lines further down which says P191550Z May 1986.

Mr. **Mazzella**. That's the date of the teletype.

The **Vice Chairman**. OK. And then the next document which appears at page 1086 is a teletype. Would you identify that?

Mr. **Mazzella**. Page 1086?

The **Vice Chairman**. Yes.

Mr. **Mazzella**. Yes. That's a teletype from FBI in Miami to FBI headquarters dated May 21, 1986.

The **Vice Chairman**. All right. One question is, how you came to testify without reviewing these documents, but I'll ask you that at the conclusion of my questions. But let me zero in first on a line on page 1084 in the first full paragraph seven lines down which says quote, "Mayor Clark has not been completely cooperative," unquote. Is that true?

Mr. MAZZELLA. Well, it depends on the context of your question. Cooperativeness in this case meant wearing a body recorder. He decided against wearing it. So, you know, in view of the word cooperation, we would include doing anything to enhance the investigation, including——

The VICE CHAIRMAN. That's all that's referred to?

Mr. MAZZELLA. Yes.

The VICE CHAIRMAN. Are you sure of that?

Mr. MAZZELLA. Absolutely, yes.

The VICE CHAIRMAN. Well, had that fact been called to the attention of this committee?

Mr. MAZZELLA. I think I testified to that earlier, that he decided not to wear a body recorder.

The VICE CHAIRMAN. So that you feel that the committee had been informed of the factual basis for your conclusion that the mayor was not completely cooperative?

Mr. MAZZELLA. Yes. That--my judgment is that is teletyped from our FBI headquarters representing Public Integrity's position. What the word cooperative there means——

The VICE CHAIRMAN. Well, you are not the author of this teletype?

Mr. MAZZELLA. Right.

The VICE CHAIRMAN. But you're giving me your conclusion that that's all that it refers to?

Mr. MAZZELLA. Yes.

The VICE CHAIRMAN. Would you tell the committee what the substance of this teletype is, Special Agent Mazzella?

Mr. MAZZELLA. All right. We're talking about 1083 again?

The VICE CHAIRMAN. Yes.

Mr. MAZZELLA. It is a teletype setting forth the Public Integrity's opinion—Public Integrity Section's opinion of the Department of Justice relative to the prosecutive merits.

The VICE CHAIRMAN. And the substance of the teletype is that the Department of Justice has not decided against prosecuting Judge Hastings?

Mr. MAZZELLA. My feeling was that it was that they had decided not to prosecute him.

The VICE CHAIRMAN. Well, how can you say that your feeling was that they had decided not to prosecute him when the substance of this memorandum says at page 1084, fourth line down—I'll start at the second line, quote, "Eric Holder"—and who is Eric Holder?

Mr. MAZZELLA. He is——

The VICE CHAIRMAN. Member of the Public Integrity Section?

Mr. MAZZELLA. Public Integrity Section.

The VICE CHAIRMAN. OK. "Eric Holder advised that criminal prosecution of Judge Hastings had not been declined by DOJ," the Department of Justice, going on, quote, "any prosecutive opinion issued by Holder regarding Judge Hastings was a preliminary opinion. William Hendricks stated that the DOJ would notify FBI Headquarters in writing when a prosecutive decision is reached in this matter," Now, in the face of that, how can you say in any way that you believe the decision had been made by the Department of Justice not to prosecute Judge Hastings?

Mr. MAZZELLA. From my conversations with the department on April 6, or April 4, I forget what date it was. That decision to prosecute Judge Hastings had been reached at that time, and that they were not going to prosecute him.

The VICE CHAIRMAN. Well, had you been aware prior to the last few moments of this teletype?

Mr. MAZZELLA. I don't rem—I don't recall the specific contents of it. I have not reviewed it or read it in——

The VICE CHAIRMAN. Well, wasn't it pursuant in fact to this teletype that you questioned Judge Hastings on May 19?

Mr. MAZZELLA. Yes.

The VICE CHAIRMAN. So then you must have seen it if you questioned him pursuant to this teletype, unless I don't follow you in some respect?

Mr. MAZZELLA. I obviously did question him after the teletype was received.

The VICE CHAIRMAN. So does that refresh your recollection that you had seen this teletype before a few moments ago today?

Mr. MAZZELLA. Yes.

The VICE CHAIRMAN. So now is it plain to you that the Department of Justice had not made a decision to decline prosecution of Judge Hastings?

Mr. MAZZELLA. All I can tell you is that at least between May—April 4 when I was informed that the department had decided not to prosecute this matter, that in all likelihood maybe the teletype that we did prepare and that the FBI headquarters referred to the department may have had some impression on the department for them to come out and issue this opinion dated May 8—May 19. I'm sorry.

The VICE CHAIRMAN. Well, Special Agent Mazzella, whatever the circumstances may have been after April 4, or whatever impact your memorandum of May 1 may have had, is there any question of any sort that as of May 19 when you received this teletype that you knew conclusively that the Department of Justice had not made a decision to decline prosecution of Judge Hastings?

Mr. MAZZELLA. Based upon this teletype, I would say that they had not.

The VICE CHAIRMAN. Well, that's what it says in black and white. Is there any area of doubt at all?

Mr. MAZZELLA. No.

The VICE CHAIRMAN. And then on the following document, which is another teletype starting at page 1086, Attorney Holder of the Public Integrity Section describes his effort to interview Judge Hastings, correct?

Mr. MAZZELLA. Yes. It does.

The VICE CHAIRMAN. All right. Let's come back then to your conversation with Judge Hastings where you told him that he was not under investigation. In the light of this teletype which you say on May 19 prior to the time that you interviewed, questioned Judge Hastings——

Mr. MAZZELLA. Yes.

The VICE CHAIRMAN. Did you give Judge Hastings a truthful answer when you said he was not under investigation?

Mr. MAZZELLA. I'd have to—in light of this teletype which I honestly don't recall. I haven't read it so I don't know. It was my impression at the time based upon the information that had been furnished to me by the department on April 6 that we weren't doing anything further criminally. I cannot recall the exact circumstances surrounding my statement to Judge Hastings at that time.

The VICE CHAIRMAN. Would you like an opportunity——

Mr. MAZZELLA. The other——

The VICE CHAIRMAN. Just a minute.

Would you like an opportunity to review these matters further, because you are under oath, Special Agent Mazzella.

Mr. MAZZELLA. I understand that. I understand that, Senator.

The VICE CHAIRMAN. And you have a document before you which you say you read prior to the time you questioned Judge Hastings, and that document says that the Department of Justice had not made a decision to decline prosecution.

Mr. MAZZELLA. The only thing I could say, Senator, is if you look at the document itself, you'll notice on the bottom of the page my initials, and the date May 21, 1986, and there's a block stamp to the right of the document dated May 2, 1986, which would indicate to me that I did not review this document until the 21st. So I, I'm sure I didn't read it before I went to call Judge Hastings.

The document is dated May 19, 1986, but probably didn't reach our field office until the 20th, and I didn't see it until the 21st. Well, there's no reference to any other conversations, as you can tell, in the beginning of the document, "Re: Miami tel to FBI Headquarters dated May 1, 1985," which is a teletype that I had transmitted. So there's no telephone calls that I can refer to in that document whatsoever.

The VICE CHAIRMAN. Well, in the second teletype at page 1088 there's a reference to, quote, "On May 20, 1986, Eric Holder telephonically advised SSA Mazzella that he did have a telephone conversation with Hastings wherein Hastings declined to be interviewed," etcetera.

Mr. MAZZELLA. Right.

The VICE CHAIRMAN. And I call that to your attention because it is a report of a telephone conversation between you and Mr. Holder, and it raises the question as to whether you and Mr. Holder had that telephone conversation, and perhaps other telephone conversations.

Mr. MAZZELLA. I don't remember other than what was discussed during that telephone conversation. I don't recall any other conversations that involved any other subject matter except what's in the teletype.

The VICE CHAIRMAN. Well, let me cut it short, Special Agent Mazzella.

Are you able to say that you have an active recollection that prior to the time you interviewed Judge Hastings on May 19, 1986, that you had not been advised telephonically or otherwise about the substance of this teletype of May 19 which says the Department of Justice had not made a decision to decline prosecution on Judge Hastings?

Mr. **Mazzella**. Yes. I don't. I don't have a recollection of that.

The **Vice Chairman**. Well, my question is to you is do you have an active recollection that you did not know that the Department of Justice had a continuing investigation in process?

Mr. **Mazzella**. I do not have an active recollection of it.

The **Vice Chairman**. Well, the import is apparent, Special Agent Mazzella, about the propriety of telling Judge Hastings that there was no investigation in process when factually there was an investigation in process, and there are certain duties on the part of the Government to notify someone who was a target, someone who was a subject, without getting deeply involved in that, and I think it's important for this committee to know precisely what you did.

Mr. **Mazzella**. I can just tell you that I didn't see this teletype until the 21st. So, I—you know, whatever the contents——

The **Vice Chairman**. OK. I would ask you to search your recollection. That's why I wanted you to read it before I questioned, why I said to you if you wanted to think about it before we pursued the questions. But I would like you to reread these two memoranda, these two teletypes and see if you have anything else to say to the committee.

Mr. **Mazzella**. I will do that.

The **Vice Chairman**. Can you—wouldn't your normal course, before appearing in a proceeding like this, review teletypes of this sort which were so crucial to the substance of your testimony today?

Mr. **Mazzella**. This might have been just one document that—you know——

The **Vice Chairman**. How about two documents?

Mr. **Mazzella**. Two documents.

I do recall reading portions of it at sometime, but—for instance, I do remember the specific reasons why, you know, relative to the prosecutive merit of the case. I do remember that aspect of it quite well. But, you know, the specific dates upon which I received these communications, I just don't remember. There's been so many of them.

The **Vice Chairman**. Special Agent Mazzella, there's been a lot of back and forth about this thing you're not permitted to testify about which you have characterized in response to Senator Lieberman as the corroboration. Is that the sole element of corroboration that you refer to in saying that Mayor Clark's testimony was corroborated?

Mr. **Mazzella**. No. There are—aside from everything else that we've heard here in testimony, that particular item the way it was done and, you know, who—I don't know whether I should get into this. If you'd like me to, I will, but I don't want to.

The **Vice Chairman**. Well, you can't get into things that the committee as a whole has told you not to get into, but it may be that that matter is pending before the committee in another line, and it may be that this matter will be pursued further because of my personal concern to be sure when this document says that Mayor Clark has not been completely cooperative, this FBI teletype, and so much reliance is placed upon Mayor Clark, that is in fact the only item on which he has not been cooperative.

Mr. Mazzella. That is the only item that he has not been cooperative on.

The Vice Chairman. Well, that's the only item you know about. But you didn't write this teletype, and you may not have even have read this teletype until today, or maybe on the 21st of May.

All right. I think I have your point. Thank you very much.

The Chairman. Are there other questions by members of the committee?

[No response.]

The Chairman. If not, is there a reason this witness cannot be excused?

[No response.]

We would purport to go ahead and excuse this witness at this time.

Let me ask the House managers, Representative Bryant, did you have an additional witness at this time?

Mr. Bryant. Mr. Chairman, might I ask one followup question of this witness before he leaves?

The Chairman. We will permit that. We've done that a couple of other times and we'll permit it this time.

Mr. Bryant. Agent Mazzella, are you not the source of information about—or were you not the source of information about the activity surrounding this information which was received by the people in Washington, DC, who wrote those memorandums back to you?

Mr. Mazzella. Yes.

Mr. Bryant. That made reference to the fact that—or wrote in there the sentence that Mayor Clark was not completely cooperative?

Mr. Mazzella. Yes.

Mr. Bryant. So all of their information came from you. Is that correct?

Mr. Mazzella. Correct.

Mr. Bryant. Thank you. I have no other questions.

The Vice Chairman. Well, how do you know that?

Mr. Mazzella. I'm just——

The Vice Chairman. How do you know that you were the sole source of their information?

Mr. Mazzella. I'm just presuming that in the natural course of business, the Department of Justice would rely upon the supervisor in a field office to report information, and I was in daily contact with the department on these matters.

The Vice Chairman. But can you conclusively rule out the possibility that they may have had other sources or other sources of information?

Mr. Mazzella. I would say that it would be absolutely shocking to me that they had other sources that they didn't tell me about. I mean, there's no——

The Vice Chairman. Well, shocking may be a good word.

The Chairman. We will excuse this witness.

Representative Bryant, did you have additional witnesses you needed to call this afternoon?

Mr. Bryant. No, Mr. Chairman.

Before closing our case, we would simply like to observe that the references made earlier to the skybox that the FBI has had the use of, should be clarified. The FBI inasmuch as they've had to be here for two weeks to testify off and on and requested these quarters of the Senate staff and were granted them, and the House has had no role in that arrangement whatsoever. I want to make that very clear.

At this time the House has no further witnesses and no further evidence to offer.

The **Chairman**. At this time, before we begin the defense portion of the case, we'll take a 10 minute recess.

Senator **Rudman**. Before you do that, can I ask the House manager a question?

The **Chairman**. Yes.

Senator **Rudman**. Am I correct in my recollection that there was either testimony here or something in your opening statement that indicated that there was a representative of the group that Judge Hastings made his appearance before that had been kind of looking out from him who arrived from court that kind of escort him and stayed with him and got him out the door. Is there such a person?

Mr. **Bryant**. Yes. I believe there is. I don't think you heard that from me, but there is a person like that.

Senator **Rudman**. Who is that person?

Mr. **Bryant**. Well, that would be part of the defense, the respondent's case. I believe that would be Ms. Vickers.

Senator **Rudman**. Is that witness going to appear on behalf of the defense?

Mr. **Anderson**. Of course.

Senator **Rudman**. Thank you.

The **Chairman**. The committee stands in recess for ten minutes.

[Brief recess.]

The **Chairman**. Proceed with your case at this time.

Mr. **Anderson**. Good afternoon, Mr. Chairman.

The respondent calls James Lawrence King, the Chief Judge of the United States District Court for the Southern District of Florida.

Mr. **Bryant**. Mr. Chairman.

The **Chairman**. Yes.

Mr. **Bryant**. Prior to the commencement of the Respondent's case, the House would again like to observe that we still do not have the list of documents, nor do we have the list of expert witnesses which the Respondent intends to call.

Mr. **Anderson**. The list of documents is being typed as fast as we can get it word processed, Mr. Chairman, and I am trying to get ahead. I hope by the end of the day we'll have something very substantial.

In terms of the experts at the present time, it is not our intention to call one. If we do discover I think we have good cause, we'll bring the matter back. But I'm not holding any back.

The **Chairman**. With that understanding, could you please come forward, Judge King.

Would you raise your right hand?

Do you, James Lawrence King, swear and affirm that the evidence you shall give in the case now pending between the United

States and Judge Alcee L. Hastings shall be the truth, the whole truth, and nothing but the truth, so help you God?

Judge KING. I do.

The CHAIRMAN. Please be seated.

Judge KING. Thank you.

WITNESSES FOR JUDGE ALCEE L. HASTINGS

TESTIMONY OF JUDGE JAMES L. KING

DIRECT EXAMINATION

Mr. ANDERSON. Judge King, so the committee and the record are clear, could you state your full name?

Judge KING. James Lawrence King.

Mr. ANDERSON. And in what post do you presently serve, sir?

Judge KING. Chief Judge, United States District Court, Southern District of Florida.

Mr. ANDERSON. When did you first become a Federal judge, Judge King?

Judge KING. October 31, 1970.

Mr. ANDERSON. And by whom were you appointed?

Judge KING. President Richard Nixon.

Mr. ANDERSON. And prior to your appointment to the Federal bench, had you been a judge before previously?

Judge KING. Yes. I was a judge for six years in the—I was a state circuit judge in the trial court in the State of Florida for six years before that.

Mr. ANDERSON. Subsequent to your appointment, have you had positions other than that of simply district judge and chief judge within the judiciary?

Judge KING. Yes. By special appointment, I've served on the Florida Supreme Court, the various courts of appeal, the intermediate courts of appeal in Florida, the First, Second, Third District Courts of Appeal. I've served by special appointment in many district courts across the nation, and I've served on the United States Court of Appeals for the Eleventh Circuit on several occasions, the United States Court of Appeals for the Fifth Circuit on several occasions.

Mr. ANDERSON. Within the administrative structure of the Federal judiciary, have you also served on committees and other organizations within that?

Judge KING. Yes. There are a number of committees of the Judicial Conference of the United States on which I have served, including the Committee on Ethics, the Committee on Bankruptcy Legislation, the Committee on Admission of Attorneys to Practice in Federal Courts Across the Nation, so-called Debit Committee, I was chairman of the follow-up subcommittee, so-called King Committee that had admission of attorneys to practice in United States courts.

Mr. ANDERSON. And are you presently a member of the Judicial Conference to the United States?

Judge KING. No. I served as a member of the Judicial Conference of the United States for three years being elected by the other judges of appellate and district judges of the Eleventh Circuit. I am presently on the Judicial Council of the Eleventh Circuit, but that's a different capacity.

Mr. ANDERSON. Mr. Chairman, might I approach the witness?

Senator LEAHY. We have a rotating chairmanship here, Mr. Anderson.

Mr. ANDERSON. Judge, I show you what's been marked as Respondent's Exhibit Number 56, and ask if you can identify that?

Judge KING. Yes. This is the résumé I furnished to you.

Mr. ANDERSON. Mr. Acting Chairman, in the interest of conserving time, might I move the admission of Respondent's Exhibit Number 56 as a résumé of the career of James Lawrence King?

Senator LEAHY. Does the House have any objection?

Mr. BRYANT. No objection.

Senator LEAHY. It will be admitted.

[The document referred to was marked Respondent's Exhibit No. 56 and was received in evidence.]

Mr. ANDERSON. Judge King, the committee has heard a good bit about a disclosure of a wiretap matter that occurred in—that was initially learned in September 1985. In your capacity as chief judge, were you made aware of the problem?

Judge KING. Yes, I was.

Mr. ANDERSON. Do you recall the circumstances in which that matter came to your attention?

Judge KING. Yes, I do.

Mr. ANDERSON. Could you recount them to the committee just briefly?

Judge KING. An assisting United States Attorney, his name is Mr. Martinez, came to me, and I believe that he had one of his colleagues with him, and perhaps an FBI agent, and they described the incident to me, and sought advice on how they should proceed with the reporting requirements of the United States Code that requires the reporting of these matters to a judge who authorizes the wiretap.

Mr. ANDERSON. And did you and they work out a procedure that you thought satisfactory at that time?

Judge KING. I told—they asked me if they thought that it would be appropriate and proper for them to make the required reports to me after that point in time, and I told them that I believed that it would be appropriate and proper for them to do that.

Mr. ANDERSON. Subsequent to the submission of those progress reports to you and your signing of them, did there come an occasion when Judge Hastings approached you on this matter?

Judge KING. Yes, there did.

Mr. ANDERSON. Now, prior to Judge Hastings approaching you, had you ever discussed it with him?

Judge KING. No, sir. Not to the best of my recollection, and I'm sure I did not, but——

Mr. ANDERSON. To the best of your recollection, Judge, when did—the best you can recall, when did Judge Hastings approach you about this and what were the circumstances?

Judge KING. My best memory on the timing would have been at about the time that a story appeared in the Miami Herald or perhaps a day before that or two days before that, because a reporter that usually covered the courthouse for the Miami Herald was going around asking questions in preparation of writing his story. So it would have either—it would have been about the time that the newspaper story appeared in the Miami Herald.

Mr. **Anderson**. Well, to try and fix your recollection, the committee has received evidence that the stories appeared I think March 26 and 27, 1986. Is that consistent with your memory?

Judge **King**. Whatever those dates show, it would have to be the dates. I don't recall the dates, but within that time frame. That is the time that Judge Hastings came to my office to see me.

Mr. **Anderson**. And that meeting occurred in your office?

Judge **King**. Yes, it did.

Mr. **Anderson**. And was anyone besides you and Judge Hastings present?

Judge **King**. No, there was not.

Mr. **Anderson**. To the best of your recollection, and I know it's a long time ago, Judge King, could you recount for the committee what Judge Hastings said to you when he approached and what your response was?

Judge **King**. He came to me I think—well, let me tell you factually what he did. He came. He related to me—my memory is that he came and said, "Has anyone been here asking you if you know about an alleged leak of confidential information to Mayor Clark?" And I said, "Yes", that a reporter had been by to ask me about that, and he then started to discuss the matter and to talk about it.

He was very, he was very angry. He was upset in terms of being angry is the way I interpreted his comments, and my position as it frequently is, almost on a daily basis in our district, judges come to me with one type of problem or another, it's not unusual, this was not an unusual—that is to say the subject matter was unusual, but the fact that judges come and talk to me about their problems is not unusual. So I listened and that was——

Mr. **Anderson**. By his conversation, did Judge Hastings give the impression that he had—that this was the first time he had learned that there may have been a leak of confidential information to Mayor Clark?

Judge **King**. You're asking me for an opinion now.

Mr. **Anderson**. Judge King, I realize in your courtroom I couldn't ask a witness that, but I think here they are permitting it.

Judge **King**. I would sustain the objection, Mr. Chairman, if it were—I mean, if I had any——

The **Chairman**. We have a more liberal use of the rules of evidence here, Judge.

Judge **King**. Well, let's see. You're asking me—would you please state your question again?

Mr. **Anderson**. Let me be direct, Judge King, because the committee has been. Based upon your assessment of the information available to you, do you think that Judge Hastings had any knowledge or was startled, any knowledge that there was an allegation that he'd made the disclosure? Do you think he made the disclosure? You know the man and you——

Mr. **Bryant**. Objection. There is a limitation on leading the witness too that I think we have tried to observe on direct.

The **Chairman**. The witness is certainly permitted to go forward and explain any impression that he had based on the conversation he had with the judge.

Mr. **Anderson**. Let me rephrase the question.

Judge **King**. May I answer the chairman's—I mean, that helps me if I may do that.

My impression, Mr. Chairman, was that Alcee Hastings when he spoke to me had only recently learned this event. I had the distinct impression that this was something that he had learned that day or within hours. Coming to me, he was angry about it, he was frustrated about it, and he was saddened, and those—that's as factual as I can be on what my impression of our conversation. As I say, my role, as it frequently is, is simply to listen and to encourage people or do what I can in terms of keeping a very difficult busy, busy court on an even keel.

Mr. **Anderson**. Judge King, in some respects these proceedings concern the fitness of Judge Hastings to remain on the bench. You, perhaps more than anyone else, have had an opportunity to observe his performance throughout his career.

Based upon your observation of Alcee L. Hastings as an United States District Judge, do you have an opinion as to his competence and qualifications to serve as a trial judge? Would you share it?

Judge **King**. Depending, of course, on what the United States Senate decides in this matter.

Mr. **Anderson**. Of course.

Judge **King**. Subject to that, may I answer it by saying factually what occurred after his acquittal in 1981——

Mr. **Anderson**. Judge, share your views with this committee.

Judge **King**. I would prefer, if I may, to tell this committee, this Senate, the Senate what I know factually rather than getting into areas of my opinion, if that's—I will say this, that Judge Hastings after his acquittal in I believe 1981 returned to the court, was and conducted himself in all respects, as far as I could determine, as a hardworking full-time judge in our court.

He did his work. He did his work well. He was diligent in his work. He worked long hours. He shared in the responsibility of the court just as does every other judge on that court. He was expected to do that. We don't, simply don't accept any less. So had he not done that, this—well, at least the House would have heard from me before this. So, no, he worked hard.

He was, has always been courteous to lawyers. He has been courteous to jurors and litigants that come before him, and I have received complimentary correspondence, letters, and things from jurors, litigants, and lawyers, which I might add I receive not infrequently about the other judges of the court also. I mean, these are not rare and unusual things I'm telling you. But one thing that he has always been very good about, and which I as the chief judge appreciate very much, is his willingness to undertake and do work of the court, administrative work, and he has never failed to do anything that I've asked him to do, and he's served on a number of committees and work of the court, and he just came back and he started pulling on the oar, and he worked, and every—one more thing that I think is significant, and that is that on each and every instance that he had to be out of the district, and because of the situation he has found himself in these last few years with hearings and meetings and things in Atlanta and in Washington and elsewhere, he has had to be absent from the district more than, of course, any of our other judges, or more than the routine situation, and in each and every instance he always writes me a little note, this is a personal thing, but he writes me a little note and tells me, "I'm going to be gone, Judge Davis is going to take care of any emergency for the next two days." But he tells me when he's going; he tells me when he's coming back, and he makes arrangements for his work to be handled. And that's the sort of thing that as the chief administrator I have appreciated.

Mr. ANDERSON. In addition to his collegiality and administrative abilities, based upon his reputation among his colleagues and to the extent you're aware of it in the bar, what are his capabilities as an actual presiding trial judge in Federal court?

Judge KING. I don't really have—Mr. Anderson, it's—I have not read records from Judge Hastings. I don't recall any appellate panels that I've sat on where I've actually watched—I mean, read records. I don't routinely go around and sit in the courtrooms. I have a feeling that's not a good thing for me to do, or for any chief judge to do, and I don't do that. So I have not actually observed trials.

Mr. ANDERSON. Do you know his reputation?

Judge KING. Lawyers—we're getting back into opinions, but lawyers have said to me, if this is permissible, Mr. Chairman, in the hallway or in our little dining room, or what have you, that he is a good judge, and they've said good things about him, mainly about his courtesy and demeanor. That is to say that he's courteous to lawyers and has a good demeanor and a good courtroom attitude toward jurors, litigants, and lawyers. So I have heard positive things about that, and I have not, to the best of my knowledge, heard anything negative.

But you must bear in mind that I see very few lawyers except in the courtroom. I do not socialize with lawyers. I don't know, I don't talk to people in the community. It's a very isolated life that those of you that have had some familiarity with the Federal courts, you understand after 19 years, the numbers of lawyers that you know and can talk to, except seeing them in the hallway, you can count on one hand.

So I'm not a good person to express an opinion about a person's reputation in the community except what I've told you.

Mr. ANDERSON. Judge King, there has been some testimony here which—concerning the nature of the case load in the Southern District and which may require us to place that in context, again you are something of an expert.

Mr. Chairman, might I approach the witness with two additional exhibits?

The CHAIRMAN. You may.

Mr. ANDERSON. Mr. King, I show you what's been marked Respondent's Exhibit 57 and 58. I would ask if you could tell the committee in that order what they are?

Judge KING. Exhibit 57 is an article that I wrote very coincidentally having nothing to do with the United States Senate or this—the work of this committee about ten days ago.

This is an article I wrote about our court for the Florida Bar Journal at their invitation, and I spent an inordinate amount of time on it, far too long, but I sent it off to the Florida Bar. It will be published in the Florida Bar Journal in the next week or two. Mr. Hastings asked me about the work of the court and the type of court we have, which he did a few days ago, I said, "Well, the best thing that I can do to summarize it is to give you a copy of this, and if you think the Senators are interested in it, there it is." I think that you'll find that it reads very easily. It's sort of a kind of a historical thing and it reads—but anyway, he said he thought you might be interested in it. That's what it is. I wrote it. Every word in there is mine. It was sent off to the Florida Bar Journal on July 14.

Mr. **Anderson**. And the words in there are based primarily upon statistical analysis of published reports by the Office of the United States Courts?

Judge **King**. The statistical detail in that 19 page document are one—are totally from judicial work, management workload statistics published by the Administrative Office of United States courts or something that some of the Senators will be familiar with, the Statistical Report of the United States Attorney's Office that I see Senator Bingaman nodding his head, and I'm sure Senator Specter is familiar with this, and perhaps others.

This is published. It's the workload statistics of the United States courts across America, and everything that is in this report, Respondent's Exhibit 57, came from these documents.

Mr. **Anderson**. Mr. Chairman, I have a few questions of these documents, but in order to get them before the committee—well let me move the admission of Respondent's 57 first, and then I will briefly question——

The **Chairman**. Is there objection to Respondent's Exhibit 57?

Mr. **Baron**. Mr. Chairman, the objection is that only that we fail to see the relevance of the document to any issue that's before the committee. We don't want to make a big deal out of it. Out of respect for Judge King, we certainly aren't going to press the point. But we just don't understand why it's being offered.

Mr. **Anderson**. May I respond?

The **Chairman**. Mr. Anderson, could you state the reason for offering the exhibit?

Mr. **Anderson**. Yes. You've heard throughout this case, for example from Mr. Deichert, who is not able to tell you what the workload was, whether delays were inordinate or not, whether 800,000 methaquaalude prosecutions were large matters or small matters, he was unfamiliar with the docket of the court and the way in which whether it would be unusual to have a defendant of the magnitude of the Romanos before a Federal judge, theme after theme it seems to me there has come out as though one might get the impression that a judge in the Southern District of Florida who continued a sentencing could spend the rest of the day on the golf course.

This is a crucially different district. That is the district this man serves on. It seems to me the House by Mr. Deichert and other testimony have placed that fact—made it a fact of consequence. This bears upon that fact.

The CHAIRMAN. We will admit the exhibit into the record.

[The document referred to was marked Respondent's Exhibit No. 57 and was received in evidence.]

Mr. ANDERSON. Thank you, Mr. Chairman.

Directing your attention now, Judge King, to what's been marked Respondent's Exhibit Number 58, could you tell the committee what that is?

Judge KING. Well, I've been asked by both counsel, Mr. Anderson and Mr. Baron, to—some questions about comparative statistics. So I thought the Senators on this committee might be interested, and if I was going to do any comparing, to compare it to the Federal district courts in your districts, that is, you are familiar with the work of your courts. So I have taken 17 district courts that are represented by the districts of, you know, Minnesota, Nevada, and so on, and that's what we've put on this Exhibit 58, which I gave to Mr. Anderson today, I believe, at noon when I came.

The right-hand column shows the active judges in your districts. You appointed these people or recommended these people. These are your judges. The next to right-hand column shows the jury trials in your districts, the jury trials in criminal cases, and then the defendants indicted, and then at the bottom it compares all 17 district courts across the nation represented by you Senators from your states with the Southern District of Florida. And you will see that if we took Senator Durenberger's district from Minnesota out of the chart——

Mr. ANDERSON. Judge King, could I break in for a minute?

Could I move its admission so the Senators could have——

The CHAIRMAN. Is there objection to this exhibit?

Mr. BARON. Again, we don't see the relevance, but we don't want to press the point too strongly.

The CHAIRMAN. We will admit the exhibit.

[The document referred to was marked Respondent's Exhibit No. 58 and was received in evidence.]

Judge KING. Thank you—well, somebody else is suppose to thank the chairman, but anyway thank you, Mr. Chairman.

Well, I'm almost through. But you can see if we took Senator Durenberger's very active court out of this, that the Southern District of Florida with 15 judges, tries more defendants charged with felonies than do the other 16 courts put together with 85 judges. So I do not mean in anyway to suggest that the judges in those courts are not busy. They are. I know most of them. I've taught most of them at judicial center conferences. They are friends and they are hardworking people. I'm simply trying to draw a small picture of the business of the United States District Court for our district compared to the nation or to the other courts.

Mr. ANDERSON. Judge King, just—I'm sure the committee can study that. Just a couple of salient facts.

What is the number of criminal felony defendants in the southern district of Florida who insist upon their right to a full trial by jury? Do you recall?

Judge KING. Forty-six percent. The chart I have given to the chairman and the other Senators is from the United States Attorney's Handbook for 1988, and that—those figures are approximately one year old. They are the figures that come up to September 1988.

I've used the Administrative Office figures to give you the number that I'm now about to give you, and forgive me, I'm very proud of my court, and I like to talk about it, but I'm almost through. I know it's late in the day, but—we right now, this year, we're processing, and by processing I mean the whole process, from indictment through trial, 3,453 individuals, individual human beings that came before our court seeking adjudication of the charges brought against them, justice, their rights on a very somber, serious process, but 3,453 as of July 1, 1989.

That resulted in, well, the civil and criminal trials, 806 trials in our district that were handled by 15 active judges, and that contrasts with, for example, the southern district of New York that has 27 active judges, that handled 669 cases, 2,234 defendants.

One other way to put this in context, the Southern District of Florida with 15 judges in criminal work handles and tried in the year that just ended July 1, more trials than did the southern district of New York, the eastern district of New York, the district of New Jersey, the northern district of Illinois at Chicago, the central district of California, Los Angeles, the eastern district of Louisiana, New Orleans, all added together, 108 judges in those courts tried fewer cases and fewer defendants, criminal, criminal now, than did our 15 judges. So, Mr. Chairman, it's a very busy court.

Now, I'm not—I don't know the relevancy of that to your—but I thought you might be interested since some of you are former prosecutors and all of you are Senators and you appoint judges, and I mean—excuse me. You nominate judges. Well, may—I guess you appoint judges.

Mr. ANDERSON. Well, judge let me——

Senator LEAHY. We give advice and consent to their nomination.

Judge KING. I see. I see.

Senator RUDMAN. Mr. Chairman, this is beginning to sound more like an appropriations hearing before my subcommittee.

Mr. ANDERSON. Let me tie in the relevance a bit.

How many trials per year does that work out to be for each of your judges, jury trials?

Judge KING. The last year it averaged 53, which is 53 trials per judge. Now, bear in mind one judge had a trial that lasted 14 months, the motorcycle gang, a very, very difficult trial, 14—well, we had nine trials that took 453 days, nine trials that lasted more than 20 days, 453 days if you figure 220 days a year, that's two judges are tied up with the long trial. Two from 15 leaves 13. So the other 13 were trying a lot more than 53 cases. But if you divide 15 into the number of trials, you come up with 53 trials per judge.

Mr. ANDERSON. Over the years since his acquittal, Judge King, in terms of productivity, based on the monthly and quarterly reports that are submitted, where does Judge Hastings rank among his colleagues?

Judge KING. He's carried his full share. He has been a hardworking judge, and in spite of the fact that he has been gone a—much more than he normally, than a judge normally is because of his personal situation. He carried his full share, the full share. I'm sure he tried more than 53 trials, but I don't know the exact number. I do know that he tried one case that took six months, *United States* v. *Navarro*. I'm very familiar with it, Senator Specter, because I now have the—I mean, you know, it's—all of these cases now are being handled by other judges in our court during the pendency of these matters, but that trial took six months.

Mr. ANDERSON. Judge King, can you give some flavor? And I know you don't like to give an opinion. What was the last criminal case you tried? What was involved in that?

Judge KING. I think Mr. Anderson wants me to tell the court what, a day in the life of a judge?

Mr. ANDERSON. Something like that.

Judge KING. I can do it in about one minute, I think. I tried a case in Key West, Florida, last week that is pretty typical. It had 10 defendants. It involved 11 tons of marijuana on a 71-foot, beat-up fishing boat, interdicted at sea by the United States Coast Guard.

The value of the marijuana on the dock, not broken up into parcels and distributed to cities, in Boston and Phoenix and everywhere else, on the dock the value was $17.8 million dollars. Had 256 bales of marijuana.

Now that is a case I tried last—I just finished last Friday, and either tomorrow or Wednesday, depending on when I get back, my next case by pure coincidence involves 12 tons of marijuana, only eight defendants. I don't know how many bales.

But these are the types of cases that are pretty routine in our district, pretty routine. So you can imagine, with 3,452 defendants in a year, you have got to try a lot of cases that have multi-defendant cases. You know, eight, ten, twelve, and so on.

Mr. ANDERSON. Judge King, a final question on that. In the course of their presentation did the Government give you any indication of what the street value or the value of 11 tons of marijuana is?

Judge KING. Yes. $17.8 million. That is delivered at the dock. That is, when the smugglers deliver it and turn it over to who they are selling it to in bulk it is $17.8 million. Now when it is divided up into smaller packets and distributed all across the United States—the reason I want to emphasize that is this is not a south Florida problem, as you Senators know. It is a problem for the nation. We just happen, by geography, to be the closest point to South America where this filth comes in. It gets distributed everywhere.

Mr. ANDERSON. Judge King, my final line of things I would like to at least open up for the committee with you goes to the vulnerability of judges to reputational or other kinds of injuries, and respecting your dislike of giving opinions, let me ask, were you the presiding judge at a trial known as *United States* v. *Billy Gray*?

Judge KING. Yes, I was.

Mr. ANDERSON. Could you tell the committee what that case was about and what happened?

Mr. BARON. We would object, Mr. Chairman. We would like to understand what the relevance is of this area that we are getting into. We believe we know what the area is and we believe it is wholly irrelevant to these proceedings.

The CHAIRMAN. Counsel, what is the relevance of the judge's experience in a totally different case?

Mr. ANDERSON. It is a case in which the lawyer was charged with having falsely attempted to influence the outcome of the case. And, as the chair knows, now that Mr. Dredge has come forward and says that Mr. Borders was in fact the kind of lawyer who held himself out, we believe that the fact that it has occurred and that this judge has experienced it on his years on the bench bears upon it.

It is a specific instance. We think the judge ought to be able to bring it forward so that the Senate can be informed of all things that might bear upon the problem.

The CHAIRMAN. Counsel, let me say I think the committee can take notice of the fact that there are allegations made against judges and public officials in all positions which prove to be groundless. And I don't know that having—unless this is in some way related to the case, I will sustain the objection.

Mr. ANDERSON. Mr. Chairman, I will not proffer that it is related other than the fact it occurred in the Southern District, that this lawyer knows about it. The Senators may take notice, but at times I get a certain skepticism.

I would emphasize as we begin the respondent's case that it seemed to me throughout the managers' presentation there was a reaching out together in anything that might bear upon any Senator's deliberation at the outer limits of relevance. And I would ask a similar indulgence be accorded the respondents to go forward.

The CHAIRMAN. Well, if Judge King would like to give his opinion on the frequency of these kinds of allegations being made against judges that he has had oversight of, that is appropriate. But I don't think it is appropriate to have him testify as to specific cases that have come to his attention if there is no claim made that the case relates to anything pending before this committee.

So we will sustain the objection with regard to him testifying on this particular case. If you want to question him in general about the extent of the problem as he sees it based on his administration of that district, you can do so.

Mr. ANDERSON. Mr. Chairman, you put me in a difficult question because I have my chief judge, who tends to want to follow the rules of evidence and not be asked generally. But I will respect the ruling of the chair. I will leave that for all of you Senators to explore to the extent that you deem it necessary.

One final point, Judge King, on the exposure of Federal judges in the Southern District of Florida. Quite apart from matters that may arise from false claims or other things, do the nature of the cases and the conditions in Miami place Federal judges in your court at risk?

Judge KING. Yes, they do.

Mr. ANDERSON. Could you share with the committee some of the information, specific things that have happened?

Judge KING. Well, factually, perhaps starting about 12 years ago every judge in our district except one, I believe, have had or have been the targets of verified assassination threats or attempts on their lives, and have had around-the-clock U.S. Marshal security at one time or another. Now, normally, we don't have more than—well, I think the most we have had is two at any given time. In my own instance, there was a plot to assassinate me with a sniper from a rooftop for a payment of approximately a million dollars to organized crime figures that the FBI interdicted with marvelous work, and I cannot tell you the appreciation that this judge has for the Federal Bureau of Investigation. I hope none of you ask me anything that requires me to say anything bad about the FBI because I wouldn't be sitting here if it weren't for their fine work.

So, in any event, that was—and, you know, it is sort of chilling to listen to those tape recordings as I had to, or I did later on, where they talk about how much your life is worth and that sort of thing. That happened.

Another occasion there was the Drug Enforcement Administration in our district intercepted and found out about a plot to land a helicopter on the roof of our courthouse, which is 11 stories tall, and my office is on the 11th floor. And the idea was that they would land on the roof, come in with atomic weapons, down a few steps and into my floor, and break out some people, some drug lords from Colombia that had paid a great deal of money to achieve this result, and eliminate, you know, my secretary, my law clerks, myself, anybody—the marshals, anybody that was around.

I found to my surprise, those of you that have supervisory control over the FBI, I found to my surprise that they couldn't just sit there and shoot the thing down with a bazooka when it came in without filling out a lot of forms and explaining why they shot. I don't know, I guess I have been a judge too long. It just seemed to be easy; why put all those people to risk. But the idea was, let them come down the hallway and, you know—I mean, down the stairway and do whatever they were going to do and then arrest them.

But those are two little incidents. But those things are a fact of life, not only in our district, but in other districts, and you all know about them. But that does bring a certain amount of stress.

Mr. ANDERSON. Mr. King, one final question, then I will turn you over to the House Manager's counsel and to the committee.

So I take it that from those events it would be safe to say that there a large number of defendants who are willing to pay very considerable sums to avoid———

Mr. BARON. I am going to object to the leading nature of the question, even before he finishes it.

The CHAIRMAN. The objection is sustained.

Mr. ANDERSON. Judge King, are there a significant number of criminal defendants in the Southern District of Florida who, based upon your experience, have the resources and would be willing to pay considerable amounts to affect the outcome of their cases before a Federal judge?

Mr. BARON. I am going to object again. There has been no factual premise established that Judge King is in a position to have any empirical basis for an opinion on that subject.

Mr. ANDERSON. Eleven assassination attempts strikes me as pretty empirical.

The CHAIRMAN. The objection is overruled. Judge, you can respond if you have an opinion on that.

Judge KING. I think counsel is correct. That I have told you factually what I know about this subject. And I do not know what is in the minds of the drug dealers out there, but the cases that I have presided over I have seen that—I mean, you cannot help but reach the conclusion that the drug culture in South America is a different mentality and they seem to think that they can achieve a result by threats, intimidation, that sort of thing. So I suppose that it is out there. That is the best that I can answer. I am trying to be actual and not give you opinions.

Mr. ANDERSON. Thank you, Judge King.

The CHAIRMAN. Is there cross-examination of the witness?

CROSS EXAMINATION

Mr. GEKAS. Mr. Chairman, members of the committee—Judge, you have stated with some descriptive power the power of some of these drug dealers and the number of criminal cases that you have seen arise and the intensity of the numbers and their increase. It does not shock you, then, to hear of allegations of $150,000 to be paid by one of these underworld figures to fix a judge or to fix a case? That wouldn't astound you in the context of all that you have seen; isn't that correct?

Judge KING. Answering you factually, Congressman, that is a case that I presided over where exactly that amount of money was tendered by a lawyer to fix a judge through influence with five United States Senators. Yes. I presided over that trial. I am comfortable about telling you what I know factually.

Mr. GEKAS. And that the cases that you are talking about, these number of criminal cases, many of them included wiretap applications, did they not?

Judge KING. Yes, they do.

Mr. GEKAS. Was there any other judge, other than Judge Hastings, ever alleged to or accused of a leak that required the judicial district to inquire into it or to be the subject of an impeachment inquiry by the House or the Senate?

Judge KING. Not since 1970 in the Southern District of Florida, to the best of my knowledge.

Mr. GEKAS. All right. You stated that the first encounter you had with Judge Hastings after the public disclosure was made to the press or otherwise that he was in your office expressing his indignation and anger, and you said something that puzzled me and I just want to get the clarification. That it was the reaction of a man who only a few hours before that had learned of this. Isn't that correct?

Judge KING. I don't know when Judge Hastings learned of it. I really don't know and I don't think he told me. When he came to my office his reaction was as I have described it.

Mr. GEKAS. Yes. You cannot tell us factually that the indignation that he registered with you, either that it was publicly disclosed or that he was not involved?

Judge KING. I do not—I could not read his mind. I have tried to describe for the Senators what I saw, factually saw.

Mr. GEKAS. You also mentioned about the press of cases and so forth. Were you aware that the original bribery for which Judge Hastings was tried was as a result of the alleged involvement of the *Romano* brothers? Does that sound familiar to you?

Judge King. Oh, yes, sir.

Mr. Gekas. And do you recall that that was the first case that Judge Hastings handled after he took the seat on the bench? Do you recall that?

Judge King. I did not know that.

Mr. Gekas. You did not know that. OK.

Counsel for the respondent counseled you about the fitness of Judge Hastings to serve on the Federal bench. And the counter, the other side of that coin in that kind of question is would you agree that if, in fact, the judge conspired to take a bribe that he should be removed from office?

Judge King. If you are asking me whether any person who has abused the trust of his office by committing an unlawful act should sit on the Federal bench, the answer to that is clearly no.

Mr. Gekas. So that if he lied under oath at his trial he should be removed from office?

Judge King. Congressman, I have presided over approximately 2,000-odd trials. I have heard everything in my lifetime I think, and I have great empathy and sympathy for people. And I have found that when they get into desperate situations in the course of testifying about a matter that is vital to their life or their property or their family, that they sometimes lie.

Asking me the ultimate question that I think the Senators—that the Senate has such an awesome responsibility to discharge in these proceedings, whether or not that should be removal from office is something, Congressman, that, with all respect, is something I would rather not answer except to say that I believe that no person and certainly no public official should ever intentionally and willfully lie.

Mr. Gekas. Judge, are you saying to me that if a Federal judge would lie on the stand that your opinion would be that the same standard you would apply to others who in their defense of their case would lie you would apply to a Federal judge lying under oath, and you would not agree that he should be removed from office?

Judge King. No, I don't believe I am saying that. I think I would hold the Federal judge to a much higher standard. I was trying to simply convey that I have deep sadness and a deep feeling of sympathy for people, I guess. So I find answering your question difficult.

A Federal judge should be held to the highest possible standard. There is no exception to that.

Mr. Gekas. And with respect to the general criterion of fitness to hold office that you answered Mr. Anderson on, would you agree that if a judge leaked confidential information from a wiretap he should be removed from office?

Judge King. Yes, but for stupidity. Yes. I don't mean to—but that is such a dumb thing to do. It is so stupid that that would be the grounds I think that if I were convinced that he had done that.

You do not do that. I am sorry. I didn't mean to digress. It is just such a dumb thing to do. But it—no, you do not reveal matters that are confidential to grand jury proceedings to anyone that does not have the absolute right and authority under the law to receive that information.

Mr. Gekas. I have no further questions.

The **Chairman**. Is there redirect?

REDIRECT EXAMINATION

Mr. **Anderson**. Very briefly.

Judge King, in the course of their administrative duties, do you and your colleagues deal with confidential matters on the court?

Judge **King**. Yes, we do.

Mr. **Anderson**. Since September 1985, has Judge Hastings continued to participate fully in those meetings?

Judge **King**. Yes, he has.

Mr. **Anderson**. Have you or, to your knowledge, any other member of the court attempted to restrict the flow of confidential information to Judge Hastings?

Judge **King**. I have not and I don't know of anybody else that—I don't believe so, no.

Mr. **Anderson**. Judge Hastings returned—he was, I believe, acquitted on February 4, 1983. He returned to active service in your court shortly thereafter, did he not?

Judge **King**. Yes, he did.

Mr. **Anderson**. Since that date, have you or any other judge in that court made any attempt to interfere with his assignment and the performance of his duties—his assumption to his share of duties like every other colleague in that court?

Judge **King**. No. No, the fair assignment of this massive amount of work I have described to the Senators is the heart of how we are able to get the judges to work as they do. The minute, or if they ever think that it is not being fairly, randomly and impartially assigned, first they crucify me and then the system falls apart. The heart of it is the fair and absolute equal division of the work insofar as we can make it that way. And yes, Judge Hastings has been one-fifteenth of that effort.

Mr. **Anderson**. And finally, and this bears on the point, it has been established, I think, in evidence that Judge Hastings was appointed to the bench in 1979. The *Romano* case was tried to a jury in 1980. Is it conceivable in your mind that that could have been Judge Hastings' first trial?

Judge **King**. Mr. Anderson, until a few moments ago I had never heard in all of these years of this proceeding anything relating to this being his first, second, third or fourth case. I know nothing about that.

Mr. **Anderson**. Nor did I.

Judge **King**. I am sorry. I know *United States* v. *Romano* but I don't know whether it was his first or fiftieth case. I just don't know.

Mr. **Anderson**. Thank you, Mr. Chairman. No further redirect.

The **Chairman**. Is there any recross examination?

[No response.]

The **Chairman**. I do not have questions. Are there questions from the committee? Senator Rudman?

EXAMINATION BY THE COMMITTEE

Senator **Rudman**. It is not a question. I would just like to give the good judge a chance to correct the record. We get a chance to correct our record on the floor. You won't. And I believe that you had a slip of the tongue in one of your answers. The record will show that in describing the helicopter coming down they were carrying atomic weapons. You meant automatic weapons.

Judge KING. Thank you. Thank you very much.

Senator RUDMAN. In this south Florida war, you don't know. I was going to say, Judge King, that I know things are pretty tough down there. I didn't think they were that tough.

But I think you would like the stenographer to change that to automatic weapons, am I correct?

Judge KING. Thank you, sir. Thank you very much, Senator Rudman. And it is a delight to have watched you today since you are the coauthor of that bill that has made a lot of my colleagues around the country tighten up their belts, like we have tightened ours, Senator. And I can show you how to save some money, I mean millions.

Senator RUDMAN. Just keep talking, Judge, because I love it.

Judge KING. In 1982 the Chief Justice of the United States sent us 28 judges for one month each to help with our workload. That was in 1982. On April 17 1987 our court adopted as a matter of policy no more visiting judges. We are going to do our own work, and we have done it. The cost of that other program, and wonderful people came to us from every one of your States, and they are wonderful judges and they were wonderful people—they cost $1,053,000.

Senator, in a small way I think since 1987 we have saved a million dollars a year just on that. Because we are doing our work and we are doing it right and we are not complaining. We would like a pay raise, but.

The CHAIRMAN. Senator Pryor?

Senator PRYOR. Yes. Judge King, I have two questions.

Before Judge Hastings came to your office, your chambers to discuss with you or to ask you about the alleged release of information or disclosure, what have you—leak—up until that point did you know anything about this particular wiretap operation?

Judge KING. Yes, Senator Pryor, I did. From the day that Mr. Martinez—United States Attorney Martinez and I believe Assistant United States Attorney Mark Snapp together with a couple of agents, or at least one agent, from the day that they came to me to tell me that they believed that a disclosure might have been made, an unauthorized disclosure, from that day forward I was the judge that handled everything dealing with that wiretap through its ultimate conclusion. I am talking about the statutory requirements for reporting, they came to me. They did not go to Judge Hastings. They-redacted—excuse me. They did continue to go to Judge Hastings. He may be hearing this for the first time, I don't know. I have never discussed this with him, nor would I. And this is procedural. I am not going to talk about what is in those wiretaps because that is 6(e) material and I think I am precluded from doing that.

But procedurally, Martinez and Snapp and some agents came to see me. They told me they had a problem where they suspected a leak. They sought my advice and counsel on how to handle the reporting process. They suggested, or perhaps I suggested that it be to me as chief judge under the circumstances so they could conduct their investigation without having to go and tell Judge Hastings their suspicions.

Obviously, if they were correct, that ended it. I mean, there was no more investigation. If they were incorrect, it end—well, I mean, so logically a procedure had to be developed. So from that point forward, I was directly involved and I must tell you I was uncomfortable. I was embarrassed a little bit about the matter because I did have to and I do have to deal with all my judges.

Senator **Pryor**. What period of time transpired, Judge King, from the point the agents came to you and said that they suspected a leak until the time Judge Hastings came to your chambers?

Judge **King**. Senator Pryor, I wish I could help you. I don't know. Whatever date, I am sure there is an FBI on their meeting with me, but I don't know. Senator, I would be guessing. It had to be several months or longer. I just don't know.

It was prior to the newspaper article which someone here said was March of that year. And I don't know, you know, it could have been six months before.

Senator **Pryor**. Mr. Chairman, I don't know this and I should. Has the Miami Herald article been made an exhibit?

Mr. **Anderson**. Yes, Mr. Chairman.

Senator **Pryor**. That particular referred to.

The **Chairman**. It is an exhibit.

Senator **Pryor**. All right. One final question.

The Judicial Conference after the wiretap disclosure allegation, was it the Judicial Conference that then started the proceeding on impeachment? Was it the conference?

Judge **King**. No. There are two things and the words are so close they are easy to get confused.

Senator **Pryor**. Council?

Judge **King**. Yes. At the circuit level they call it council. At the United States level it is conference—Judicial Conference.

The Judicial Conference meets in Washington twice a year, presided over by the Chief Justice. That is the—I served on that for three years.

The Judicial Council in our circuit convenes in Atlanta, Georgia, and it meets two or three times a year, and it is presided over by Chief Judge Roney or whoever is chief judge.

Senator **Pryor**. You are the chief judge of that particular district. Were you ever asked your opinion or counsel about whether or not such proceedings should be carried on in the Hastings matter to attempt to have him impeached?

Judge **King**. Senator, I was on the Conference of the United States when the matter came up for a vote, and I abstained because I was Judge Hastings' chief judge.

Have I been asked whether I thought the procedure—I accept the fact that we have a procedure to bring to the attention of the Judicial Council—infirmity, drunkenness, laziness, impropriety—that was adopted by the Congress several years ago. I accept the fact that there is such a procedure and, indeed, I deal with letters from litigants and lawyers all the time.

But, as to if anyone officially, that is, if Chief Judge Godbold ever sought my opinion or if then Chief Justice Burger or in the final time Chief Justice Rehnquist sought my opinion, the answer is no. And the Judicial Conference of the United States, when I told them I was going to abstain or recused myself and explained my reasons, accepted it without question, and that has been my position and the position of my court. That there are institutions like the United States Senate and juries and others to deal with these matters when an allegation is raised, and that we should not in the spirit of trying to make one of the busiest courts in America function efficiently and effectively get into the area of expressing any ultimate opinion on the awesome matter that you Senators are now wrestling with and must decide.

Senator PRYOR. Thank you, Judge.

Judge KING. I don't know whether—I hope I have answered your question.

Senator PRYOR. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Are there other questions from the committee?

Senator BURNS. I have one.

The CHAIRMAN. Yes, Senator Burns.

Senator BURNS. I just have one, Judge King, and it may lead to another one. I know that is what we all say. We just got a couple of questions and it leads on to 45 more.

How long have you been the chief judge in the South Florida District?

Judge KING. Five years, Senator Burns.

Senator BURNS. To your knowledge, do you know of any other cases where a wiretap information was leaked or discovered where it caused a complete shutdown of any investigative covert operations by a Federal or a State law enforcement agency?

Judge KING. No, sir, I do not. But those matters would be more uniquely in the minds of the United States Attorneys in the district. In other words, the United States Attorney would—might know of other such instances that never came to my attention because there was no indictment or case.

But to answer your question directly, no, sir, I do not.

Senator BURNS. No further questions. Thank you.

The CHAIRMAN. Senator Bryan?

Senator BRYAN. Judge King, Respondent's Exhibit 58, which is the "List of Cases: Defendants Active Judges," what you have submitted, prompted a couple of questions, if I might.

Judge KING. Sure.

Senator BRYAN. If I understood your testimony, I believe you said the last criminal trial consisted of 15 defendants who were charged with a smuggling offense, in effect.

Judge KING. Ten. Yes, sir, ten defendants.

Senator BRYAN. My question would be on that column marked "Defendants tried by jury." If you were to add that to this list, would you add it as ten or as one, referring to one trial?

Judge KING. Very good point. It would be added as 10 under this chart. These are individual defendants tried by juries.

Senator BRYAN. As opposed to the number of jury trials which a particular judge had?

Judge KING. Exactly. Yes, sir.

Senator BRYAN. Thank you.

Judge KING. Yes.

The CHAIRMAN. Senator Kerrey?

Senator KERREY. Judge, you were appointed to be a Federal judge in 1970?

Judge KING. Yes, sir.

Senator KERREY. Could you just describe to me what sort of changes, if any, were required as a consequence of becoming a Federal judge? What sort of changes, if any, you made in your relationship with previous friends? Do you adjust your behavior as a consequence of becoming a Federal judge?

Judge KING. The answer is yes. I had been a State judge for six years and so the process had already begun. But it becomes, just because that is the way of things, an almost monastic life. I am not sure this is good. I think judges ought to have a feel for their communities and know what, you know, what life is really like out there. But the end result is that you go to work. Typical day, most of my judges arrive at the courthouse at eight o'clock in the morning. We try cases till about 12:15. We have a little dining room where we walk over and get a sandwich and come back, and six, seven, eight, nine, ten of us each lunch for 30 or 45 minutes. We go back. We sentence people every day of our lives, usually at 1:30, or some of them do it early in the morning or late. We try a case all afternoon. In my situation, I always quit around 6, 6:30, and then here comes the court executor, here comes the U.S. marshal, here comes the judges, here comes everybody with all the administrative problems of the day, and I finish up about 7:30 at night and go home, and I am too tired to do much except, I guess if I had a dog, kick the dog.

Senator KERREY. Are there conflicts, Judge, though, between loyalty to a friend who might in fact have a case in front of you and your responsibilities as a judge?

Judge KING. It gets easier as you go along. After a few years, the only friends you have are those five, six, seven, eight judges you see at lunch. I mean, that is the truth of the matter. You just simply——

Senator KERREY. You are saying that you narrow your relationships with other people as a consequence of the workload, not as a consequence of your responsibilities as a judge?

Judge KING. Oh, I think it is a combination of both, Senator.

Senator KERREY. Describe the second part to me. Describe to me what kinds of modifications you might make as a consequence of your becoming a judge in the circle of friends that you would have and the discussions that you might have with those friends.

Judge KING. Senator, the only friends that my wife and I have are other judges, the neighbors—you know, our next-door neighbors, the neighbors on our street. And, Senator, that is just about it.

Senator KERREY. Would you go to a political fundraising event?

Judge KING. No, sir.

Senator KERREY. Why would you not?

Judge KING. The canons of ethics prohibits it.

Senator KERREY. Would you have a conversation with someone who had a case in front of you who was a friend as well?

Judge KING. About the merits of the case?

Senator KERREY. About anything while that case was in front of you.

Judge KING. Oh, I might say to a senior partner that I did run—we do go to a bar association. You know, once a year the Dade

County Bar has a nice dinner for the judges and we go. I may run into the senior partner of a large law firm and say, One of your young trial lawyers tried a case before me three months ago and did a fine job. That type of comment, yes, I may. If you are talking about merits on the case pending before me, absolutely not.

Senator KERREY. You restrict, then, the contact that you have with people as a consequence of your responsibilities as a Federal judge?

Judge KING. Not only mine, but everybody in my office. My law clerks cannot, cannot talk to any lawyer.

Senator KERREY. Tell me about your law clerks. How many do you have?

Judge KING. I have two.

Senator KERREY. How do you hire them? What are the qualifications that are necessary to become a clerk for you?

Judge KING. I have just finished the application process and I received about 200—I received exactly 246 applications for the two jobs, and they came from mostly law schools on the Eastern Seaboard, although some came from—several came from California and a few from the middle part of the United States.

My two present law clerks review them and put them into three stacks, A, B and C, depending on their opinion. I read all in A, all in B, and I usually scan stack C. We select 10. I select 10. I talk with my present law clerks. We select 10 and we bring them in for interview. If the person is too poor to afford to fly here from Bolt Hall or Harvard or wherever, I don't make it an absolute requirement because we were all poor at one time.

But I basically interview 10 people. I interview in May and I hire on June 1, and I hire two people for the year—one year.

Senator KERREY. Do you consider academic performance in school to be important?

Judge KING. Yes, sir.

Senator KERREY. Tell me about that. Do you hire in the top quartile, the top 10 percent? Do you hire exceptional individuals, or is that a factor at all?

Judge KING. Senator, I was—most judges do what you say. I am a little different. I like to talk to the young people. I have found that anybody that is in the 10 they are fine and they are qualified. Some have been Law Review, some have been moot court. Some have—if the kid worked 75 hours a week and has a high C average, Judge King is apt to hire them. That is just me. I have a great sympathy for young people.

So I am a little bit different perhaps. But generally speaking, most judges look for high grades, editors of the Law Review, that sort of thing.

Senator KERREY. Would you say your relationship to your clerks is such that they work for you, or are there instances where your clerks have a significant amount of impact upon how your judgments are made?

Judge KING. How my judgments are made?

Senator KERREY. Yes. Would you, for example, say that a clerk——

Judge KING. No, sir. They work for me.

Senator **Kerrey**. Would you say, for example, that a clerk could present an order to you, let's say, almost on either side of the issue and you would accept on the face of it the clerk's presentation was to be followed and valid?

Judge **King**. The most direct way I can answer your question. Every day of my life I receive twenty motions. Every judge in our court receives an average of 20 a day. Now that is 400 a month. Those 20 a day personally come to my desk. I go over every one of them before I go into court. I rule—and I am talking about an average day. I rule on eight of them right then and there. My clerk never sees them. Twelve will be held for a response from the other side. I am a little arbitrary. Been there a long time, some of these times I know what I am going to do without waiting for the other lawyer to respond. I just do it. I dictate it to my—I give it to my secretaries. They type it. The order comes back, the end of the day it is gone. My clerk never sees it. The rest of it may go out, "Hold for response."

The response comes in from the other attorney within eight days. I read the response. I write on there what I want to do or what I think I want to do, my tentative thought. Sometimes I tell them to research, sometimes I don't. Sometimes I tell them to draft an order, sometimes I don't. But I have been doing this an awful long time and it is a lot easier for me than it is for judges that I teach, Federal judges. You know, new, less experienced judges.

But no. I tell my clerks exactly what I want in that order. And by the way, I do every order, everything. We don't ask a lawyer to prepare any order in my division. But again, Senators, I am different. I am not a good standard because not all judges do this. Judges sometimes rely on lawyers to prepare orders. But I think it is a function, and this is what I try to teach our new judges when they come to our court, this is what I teach at the Federal Judicial Center, do your own orders.

Lawyers are advocates. Lawyers can't help but put in that order something that is going to help their client I don't say that critically. That is just a fact of life. A judge is an impartial referee. A judge can sit down and dictate an order that is neutral in its emotion-generating language.

And so that is the way I do it in my office, but I don't hold that standard as being a good standard for others. It is just the way I do it.

Senator **Kerrey**. Thank you.

The **Chairman**. Are there other questions from the committee? [No response.]

The **Chairman**. If not, Judge, we appreciate your testimony very much.

Any reason that Judge King cannot be excused at this point? [No response.]

The **Chairman**. You are excused, Judge.

We have a vote scheduled at 5:30, so I think the committee will recess at this time. I am advised that tomorrow morning, because of a mark-up in the Agriculture Committee, we will have to delay our convening until 10. So we will convene tomorrow morning to 10 and continue with the case by the defense.

[Whereupon, at 5:33 p.m., the committee was adjourned, to reconvene on Tuesday, July 25, 1989, at 10 a.m.]

IMPEACHMENT OF JUDGE ALCEE L. HASTINGS

TUESDAY, JULY 25, 1989

U.S. Senate,
Impeachment Trial Committee,
Washington, DC.

The committee met, pursuant to notice, at 10:06 a.m., in room SH-216, Hart Senate Office Building, Hon. Jeff Bingaman (chairman of the committee) presiding.

Present: Senators Bingaman, Specter, Leahy, Durenberger, Pryor, Rudman, Bryan, Bond, Kerrey, Gorton, Lieberman, and Burns.

House Managers Present: Representatives Bryant, Synar, Gekas, and Fish.

Counsel Present: Terence J. Anderson, counsel for Judge Hastings; Patricia Graham Williams, counsel for Judge Hastings; Robert S. Catz, counsel for Judge Hastings; Lewis Myers, Jr., counsel for Judge Hastings; Alan I. Baron, Special counsel, House Impeachment counsel; Janice E. Cooper, Patricia Wynn, and Lori E. Fields, assistant special counsel, House Impeachment Committee; Michael Davidson, Senate Legal Counsel; Elaine Stone, counsel, Senate Impeachment Trial Committee, Mark Klugheit, counsel, Senate Impeachment Trial Committee; and Bruce McBarnette, counsel, Senate Impeachment Trial Committee.

Staff Present: Anthony Harvey, administrator, Senate Impeachment Trial; P. Casey McGannon, staff assistant, Senate Impeachment Trial Committee; Isabel McVeigh, staff assistant, Senate Impeachment Trial Committee.

The Chairman. The committee will come to order. We will struggle to get this sound system turned on.

Why don't we proceed? Mr. Anderson, did you wish to call your next witness?

Senator Gorton. Mr. Chairman?

The Chairman. Yes. Senator Gorton.

Senator Gorton. Before we start with the first witness, may I make a statement?

The Chairman. Certainly.

Senator Gorton. I would have preferred to make this statement at the close of the case of the House yesterday, but I was unavailable to be here. But I think it may be important for the respondent as well as for the House.

I was deeply disturbed by the entire presentation on the disclosure count in this impeachment proceeding, and I think I can't put it any more bluntly or more baldly than this. In my view, even accepting the House's case and its strongest presentation, I would be unwilling to vote for conviction of impeachment. Assuming that the disclosure was made, assuming that the disclosure was made in the fashion set out by the House, we would have, I think, something which was quite wrong, appropriate for censure, perhaps, by the Eleventh Judicial Circuit; but standing alone, I would not vote to convict on impeachment a judge and deprive that judge of office for life on the basis of those allegations.

The Department of Justice declined to prosecute. The Eleventh Circuit declined to include that in its statement which came to the House on Impeachment. I think both of those decisions were wise decisions without deprecating at all the seriousness of such a disclosure.

I'd say this at this point: If we had greater jurisdiction, I'd have moved to dismiss at the end of the House case. We can't. We don't have that responsibility here. But I say it at this point simply from the point of view of the respondent's case as they deal with that particular issue and only from the perspective of one Senator out of 12 on this committee and one out of a hundred. At this point, I can say to the respondent, the only thing they can possibly do by beating this dead horse is cause me to change my mind, which I'm sure that they do not wish to do. But I am sorry that this count was brought up because I simply don't think it warrants consideration with the other serious charges in this case.

The **Chairman**. Thank you for that statement, Senator Gorton.

If respondent's counsel would go forward with their next witness.

Mr. **Anderson**. Thank you, Mr. Chairman. Ms. Williams will examine Pat Thomas, who is our next witness.

Mr. **Bryant**. Mr. Chairman, before the witness arrives, we will once again renew our request for the list of documents and for the experts, which we still don't have.

Mr. **Anderson**. They will have a draft of it this morning. The experts, we do not have.

The **Chairman**. You do not have expert witnesses?

Mr. **Anderson**. We do not have experts.

The **Chairman**. And the list of exhibits will be delivered this morning?

Mr. **Anderson**. A draft this morning, yes.

The **Chairman**. We appreciate that.

Ms. Thomas, could you stand, please, and raise your right hand? Do you, Patricia Thomas, swear and affirm that the evidence you shall give in the case now pending between the United States and Judge Alcee L. Hastings shall be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. **Thomas**. Yes, I do.

The **Chairman**. Please be seated.

Ms. **Williams**. I will try to make this brief so as not to beat a dead horse.

Ms. Thomas, where do you reside?

TESTIMONY OF PATRICIA THOMAS

DIRECT EXAMINATION

Ms. **Thomas**. At 19601 Northeast 12th Avenue, North Miami Beach, Florida.

Ms. Williams. How are you employed?

Ms. Thomas. I'm employed as an Administrative Assistant II with the Metro Miami Action Plan.

Ms. Williams. And in September 1985, how were you employed?

Ms. Thomas. I was in the same position.

Ms. Williams. All right. Now, does MMAP have an annual convention?

Ms. Thomas. Yes.

Ms. Williams. And when was that convention held in 1985?

Ms. Thomas. September 6 and 7, 1985.

Ms. Williams. And where was it held?

Ms. Thomas. At the Hyatt Regency Hotel in downtown Miami.

Ms. Williams. And on September 6th, who was the guest speaker?

Ms. Thomas. Judge Alcee Hastings was the morning speaker.

Ms. Williams. All right. Now, when did Judge Alcee Hastings arrive at the Regency in connection with his speech for the annual convention?

Ms. Thomas. He arrived the night before in the early evening.

Ms. Williams. All right. Did you see him that evening?

Ms. Thomas. Yes, I did.

Ms. Williams. Did you have any discussion with him on that evening?

Ms. Thomas. Yes. I accompanied him down to our office which we were using at the hotel at the time to stuff our conference kits for the following morning conference.

Ms. Williams. Did the judge express any concerns to you on that evening?

Ms. Thomas. Yes, he did. I explained to him that we would pick up his expenses for the hotel and that we expected him to be down in the area once the program started. We were scheduled to start at 8:30. And——

Ms. Williams. More specifically, Ms. Thomas, did he express any concerns to you regarding a need to get away from the speech on the following——

Ms. Thomas. Yes, he did.

Ms. Williams. Could you tell the committee about that?

Ms. Thomas. He explained to me that he had to be in court the next morning and that after he spoke he would like to be able to get away to get to court.

Ms. Williams. And what did you do in order to meet that concern?

Ms. Thomas. I assured him that once the program got started I would come up and accompany him down to the ballroom and also make sure that he got out after he spoke.

Ms. Williams. All right. And did you do that?

Ms. Thomas. No, I didn't.

Ms. Williams. What did you do?

Ms. Thomas. The following morning, I had to be in place at 7 a.m. to meet the volunteers for the conference and to check to make sure that all of the rooms were set up for staff workshops. And I recall talking with Joy Vickers that morning and asking her to do that because of all my running around.

Ms. WILLIAMS. All right. You've just refereed to a Joy Vickers. Was the name Vickers at that time?

Ms. THOMAS. Joy Royals.

Ms. WILLIAMS. It was Joy Royals at that time.

Ms. THOMAS. Yes.

Ms. WILLIAMS. Now, what did you tell Ms. Royals to do?

Ms. THOMAS. I asked her if she would go up and get the judge and bring him down to the ballroom when it was time for the program to start, and to also make sure that he got out once he spoke.

Ms. WILLIAMS. And do you know whether or not she met those suggestions?

Ms. THOMAS. Yes, she did.

Ms. WILLIAMS. OK. When did you learn that she had, in fact, brought the judge down and had escorted him out right after his speech? Did you learn that on the 6th or some subsequent time?

Ms. THOMAS. That was sort of routine in terms of it being handled. I knew that once I asked her to do that it would be done and taken care of. It was uneventful, so there was no discussion.

Ms. WILLIAMS. Now, where were you when the judge concluded his speech? Were you in the room?

Ms. THOMAS. I was in the pre-function area of the ballroom, which is outside of the ballroom.

Ms. WILLIAMS. Now, did there come a time when you were interviewed by the FBI regarding that speech on the 6th of September?

Ms. THOMAS. I was interviewed several months later by the FBI.

Ms. WILLIAMS. And what was discussed during that interview?

Ms. THOMAS. During that time, I recall the FBI asking my role as it related to Metro Miami Action Plan. They wanted to know about the conference and whether Mayor Clark was at that conference and who was the morning speaker.

Ms. WILLIAMS. All right. Were there any inquiries regarding videotapes?

Ms. THOMAS. Yes.

Ms. WILLIAMS. And the response that you gave them was?

Ms. THOMAS. The response I gave was that we videotaped all of the sessions. The opening session, however, the tape did not come out, and I gave them the name of the person at Miami Dade Community College, the video crew who taped that opening session.

Ms. WILLIAMS. All right. Were there any inquiries about photographs?

Ms. THOMAS. No, none.

Ms. WILLIAMS. Tell the committee what concern was expressed by the FBI regarding protecting the reputation of Judge Hastings and Steve Clark.

Ms. THOMAS. At the time, they indicated that this was just routine questioning, there was nothing to be concerned about. And to my recollection, there was no real discussion about that. The focus was on the tape.

Ms. WILLIAMS. Were you told that you could not discuss the interview?

Ms. THOMAS. No. It was not confidential.

Ms. WILLIAMS. Now, are you familiar with Judge Hastings' reputation in the community?

Ms. THOMAS. Yes.

Ms. **Williams**. And what is that reputation?

Ms. **Thomas**. I think the judge has a fine reputation as far as I'm concerned. I only heard positive things about him.

Ms. **Williams**. Do you have any personal opinion regarding the judge's character?

Ms. **Thomas**. My personal opinion is the same.

Ms. **Williams**. Thank you. Nothing further.

The **Chairman**. Is there cross-examination?

CROSS EXAMINATION

Mr. **Synar**. Yes, sir, Mr. Chairman.

Good morning, Ms. Thomas. I'm Congressman Mike Synar from Oklahoma. I'm part of the House managers team. Welcome to Washington.

Now, Ms. Thomas, isn't it true that prior to the morning program in the ballroom there was a period of time for registration?

Ms. **Thomas**. Prior to the ballroom session?

Mr. **Synar**. Yes.

Ms. **Thomas**. Yes. The registration began at 7:30 a.m.

Mr. **Synar**. Now, that registration, in fact, took place right outside the ballroom in the promenade area; isn't that correct?

Ms. **Thomas**. That's correct.

Mr. **Synar**. Now, at that time, a continental breakfast was set up for all the people attending the conference this morning; is that correct?

Ms. **Thomas**. There were several stations set up for a continental breakfast, yes.

Mr. **Synar**. Now, Ms. Thomas, what time did the registration period and continental breakfast begin?

Ms. **Thomas**. That was set up approximately 6:45 to give the volunteers an opportunity to also have coffee before they began registration.

Mr. **Synar**. OK. And it lasted until the morning program began in the ballroom; is that not correct?

Ms. **Thomas**. That's correct.

Mr. **Synar**. Now, this was the time that the conference participants gathered together, met and visited with each other; correct?

Ms. **Thomas**. Yes.

Mr. **Synar**. All right.

Ms. **Thomas**. They did networking at that time, yes.

Mr. **Synar**. And there were hundreds of people gathered at that time——

Ms. **Thomas**. Yes.

Mr. **Synar** [continuing]. Isn't that true?

Ms. **Thomas**. Uh-huh.

Mr. **Synar**. Now, also, Ms. Thomas, isn't it true that off the promenade area there was a room set aside for program participants and dignitaries, such as Judge Hastings and Mayor Clark?

Ms. **Thomas**. Yes. There was a room set up, but that room was optional. It wasn't where everyone was escorted to that room. But the room was set up for that purpose.

Mr. **Synar**. But if they wanted privacy, they could go there; correct?

Ms. THOMAS. That's correct.

Mr. SYNAR. And that room for the dignitaries was right next to the rooms used by the MMAP staff; is that correct?

Ms. THOMAS. Yes.

Mr. SYNAR. And the dignitaries could use the phone in that MMAP staff room; is that correct?

Ms. THOMAS. Yes.

Mr. SYNAR. OK. Thank you, Ms. Thomas. No further questions.

The CHAIRMAN. Is there redirect examination?

Ms. WILLIAMS. No, there is not, Mr. Chairman.

The CHAIRMAN. I have no questions. Are there questions from any member of the committee?

[No response.]

The CHAIRMAN. If not, is there any reason this witness cannot be excused?

[No response.]

The CHAIRMAN. Ms. Thomas, you are excused. We appreciate your testimony very much.

[Witness excused.]

The CHAIRMAN. If the respondent would call its next witness.

Mr. ANDERSON. The respondent calls Flauren Joyette Vickers.

The CHAIRMAN. Raise your right hand, please. Do you, Flauren Joyette Vickers, swear and affirm that the evidence you shall give in the case now pending between the United States and Judge Alcee L. Hastings shall be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. VICKERS. Yes.

The CHAIRMAN. Please be seated.

Mr. ANDERSON. Mr. Chairman, we will be showing some slides during this. I don't know, but it might enable the committee to see them better if those lights could be dimmed.

The CHAIRMAN. All right.

Mr. ANDERSON. Good morning, Ms. Vickers.

TESTIMONY OF FLAUREN JOYETTE VICKERS

DIRECT EXAMINATION

Ms. VICKERS. Good morning.

Mr. ANDERSON. You're going to have to speak right into the speakers so that everyone can hear you without your raising your voice.

Where do you reside presently?

Ms. VICKERS. I reside in Miami, Florida.

Mr. ANDERSON. And by whom are you employed?

Ms. VICKERS. With Dade County Metro Miami Action Plan.

Mr. ANDERSON. And that is an agency of Dade County?

Ms. VICKERS. Correct.

Mr. ANDERSON. By whom were you employed in September 1985?

Ms. VICKERS. By Dade County Metro Miami Action Plan.

Mr. ANDERSON. And do you recall an annual conference for the Metro Miami Plan in September 1985?

Ms. VICKERS. Yes.

Mr. ANDERSON. Were you present at that conference?

Ms. VICKERS. Yes.

Mr. **Anderson**. What were your duties? Well, directing your attention to the morning session, what were your duties that morning?

Ms. **Vickers**. My duties that morning were basically to make sure that my workshop was intact.

Mr. **Anderson**. And what was your workshop?

Ms. **Vickers**. It was the Economic Development Committee.

Mr. **Anderson**. And did you have any other responsibilities that morning?

Ms. **Vickers**. Later on that morning, Ms. Thomas asked me to call Judge Hastings to come down for the opening session.

Mr. **Anderson**. And did he? Did he come down?

Ms. **Vickers**. Yes.

Mr. **Anderson**. And did you have any conversations with him at that time?

Ms. **Vickers**. OK. I called him, and after he came down, he informed me that he had to be in court by 10:30 so to try and get him out of there by 10:15. And he gave me his valet parking ticket.

Mr. **Anderson**. What did he ask you to do with his valet parking ticket?

Ms. **Vickers**. He asked me to have his car brought up front so in case he was running behind, you know, we wouldn't have any delay in getting the car out.

Mr. **Anderson**. And did you have his car brought up front?

Ms. **Vickers**. Yes.

Mr. **Anderson**. Now, were you present for portions of the morning session?

Ms. **Vickers**. Not really. Just as far as taking the judge in and making sure that when he was finished his speech that he came out. So it was maybe about 10 minutes.

Mr. **Anderson**. And in connection with your staff duties, were you aware that someone had been assigned to take pictures that morning?

Ms. **Vickers**. Yes.

Mr. **Anderson**. And have you seen those pictures?

Ms. **Vickers**. Yes.

Mr. **Anderson**. And in point of fact, did you produce them for me when I asked for them some time ago?

Ms. **Vickers**. Yes.

Mr. **Anderson**. Mr. Chairman, I think it might aid the committee at this time if I took Ms. Vickers through those. I think the angles are correct that I can point things out.

I have only one set of marked blow-ups of the slides that I'm about to present. I'd be happy to turn over the original slides and the blow-ups to the committee for whatever—I don't know what the production problems are of including them, but these are in order. What I would ask is that I will put these in front of the witness, ask her to identify the still as a depiction of a picture, and then ask her briefly to tell the committee what's in the pictures.

Ms. Royals, I show you what have been marked Respondent's Exhibits 59 through 72. As we portray the slide, if you will confirm that this is a reproduction of the slide, and then I'll ask you a few questions about each slide.

Ms. **Vickers**. OK.

The CHAIRMAN. If we can turn the lights down more, that would be helpful.

Mr. ANDERSON. Mr. Chairman, may I be free to walk?

The CHAIRMAN. Yes, you may. I think it's going to be difficult to pick you up on the microphone unless you stay near the podium.

Mr. ANDERSON. I will try and keep my classroom-size voice on for this brief period and hope the mikes can pick it up.

Again, can the committee see that?

The CHAIRMAN. I believe we can see it.

Mr. ANDERSON. Ms. Vickers, directing your attention to the slide on the screen, is Respondent's Exhibit 59 a reproduction of that picture?

Ms. VICKERS. Yes.

Mr. ANDERSON. And as you look at that picture, can you tell the committee what it is a picture of?

Ms. VICKERS. This is a shot of the conference in the ballroom area.

Mr. ANDERSON. And when you say the conference in the ballroom area, where in the Hyatt?

Ms. VICKERS. In the lower level.

Mr. ANDERSON. And this is the main ballroom that opens up to accommodate larger audiences or other gatherings?

Ms. VICKERS. Yes.

Mr. ANDERSON. Do you recall how many people were there that morning, approximately?

Ms. VICKERS. We had anywhere from 800 to 1,000 people.

Mr. ANDERSON. I wonder if we could move to the next picture.

Ms. VICKERS. Lights.

Mr. ANDERSON. To the extent you——

The CHAIRMAN. We have a problem, I guess, in getting these lights further down. I guess we go off television if we do that or something. Why don't we go ahead and turn the lights down and just go off TV? I think it's more important that the committee see it then the TV audience at this point.

Mr. ANDERSON. We will make a set of these photographs available for the TV, if they wish to try and see them.

Now, Ms. Vickers, is that an accurate depiction of what is marked Respondent's No. 60?

Ms. VICKERS. Yes.

Mr. ANDERSON. Could you tell the committee what that is?

Ms. VICKERS. This is a shot of the opening session where Mayor Clark is up on the dais with Leslie Pantine. It looks like they're shaking hands.

Mr. ANDERSON. Now, do you recall why Mayor Clark would have been up at the dais?

Ms. VICKERS. Could you repeat that, please?

Mr. ANDERSON. Do you recall why Mayor Clark would have been up at the dais that day?

Ms. VICKERS. Yes. He was accepting an award because he's the original founder of MMAP.

Mr. ANDERSON. And that would be reflected on the program which is in evidence?

Ms. VICKERS. Yes.

Mr. **Anderson**. Fine. Now, immediately behind the speakers' table, there appear to be two red exit lights. Could you tell the committee what those mark?

Ms. **Vickers**. Yes. Those are exit doors into the catering area of the Hyatt Regency Hotel, where they prepare the food.

Mr. **Anderson**. And were you familiar with that area on that day?

Ms. **Vickers**. Yes.

Mr. **Anderson**. Why?

Ms. **Vickers**. I used that area to bring to bring the judge in and take him back out.

Mr. **Anderson**. Could we have the next picture?

Now, can you tell the committee where this picture is being taken from?

Ms. **Vickers**. This is also in the ballroom area, the opening session, and the mayor is speaking. It looks like he has the award in his hand.

Mr. **Anderson**. And that would have been during the awards ceremony portion of the program?

Ms. **Vickers**. Yes.

Mr. **Anderson**. Now, the exit sign right behind the mayor's head, is that the exit way into the service area?

Ms. **Vickers**. Correct.

Mr. **Anderson**. Where would the main entrance and exit to the ballroom be?

Ms. **Vickers**. For the participants, it would be directly in front of the mayor.

Mr. **Anderson**. All the way at the back of the room?

Ms. **Vickers**. Right.

Mr. **Anderson**. So if you were looking in this committee room, the Seal of the Senate would be where the service exit is; is that correct, ma'am?

Ms. **Vickers**. Yes, for the people in the audience.

Mr. **Anderson**. And the people in the audience would be at the back of the room as it is here?

Ms. **Vickers**. Yes.

Mr. **Anderson**. Thank you.

Could we see the next picture, Charles?

Again, can you identify what that is a picture of?

Ms. **Vickers**. That's still another shot of the mayor and the opening session.

Mr. **Anderson**. OK. Charles, next?

Now, what is that a picture of?

Ms. **Vickers**. This is a picture of Mayor Clark, Rick Katz, and I think the other gentleman is Dick McKuen, who also was an award recipient. He was one of the original founders of MMAP, and they're sitting in the audience during the opening session.

Mr. **Anderson**. Could we see the next picture, Charles?

What's that a picture of?

Ms. **Vickers**. This is a picture of Judge Hastings at the opening session.

Mr. **Anderson**. And he was the keynote speaker?

Ms. **Vickers**. Correct.

Mr. **Anderson**. Charles?

Now, who else was at the head table during the judge's speech? Can you tell us?

Ms. VICKERS. At the head table, to the committee's left, that's Leonard Britton who was the superintendent of the Dade County public school system; Jesse McCrary, who introduced Judge Hastings; and Merritt Sterheim who was the present county manager of Dade County.

The next shot is Judge Hastings speaking at the opening session.

The same thing, Judge Hastings speaking.

Mr. ANDERSON. Now, again, the exit sign immediately over the judge's head conceals the doors to the service way?

Ms. VICKERS. Yes.

Mr. ANDERSON. Now, you testified before, I think, that you eventually took the judge out. How did you get to the judge? When you were going to take him out after the speech, how did you get into the room?

Ms. VICKERS. I came through the service catering area.

Mr. ANDERSON. And you were then behind the speakers' table?

Ms. VICKERS. I was behind—correct.

Mr. ANDERSON. Who's that?

Ms. VICKERS. OK. This is a shot of—I can't pronounce his first name, but President Foote who is the president of the University of Miami, and Cyrus Jolivet who is the vice president of public affairs at University of Miami.

Mr. ANDERSON. We had to include that exhibit.

Next shot. Who are those pictures of?

Ms. VICKERS. OK. This is another shot of the opening session. The gentleman on the far left that has the program in his hand is, or was the mayor of Miami, the city of Miami. That is Maurice Foray who also is a founder of MMAP, and he was awarded, or given an award that morning.

The next gentleman is Monsignor Walsh. The other gentleman is Eduardo Pedron, who is the vice president of Miami Dade Community College, downtown campus.

Mr. ANDERSON. Just put it back a minute, if you would, Charles.

Do I take it from the fact there's a wall over there that we are looking at what would be stage left at the far side of the audience in this picture?

Ms. VICKERS. Yes.

Mr. ANDERSON. What is this a picture of?

Ms. VICKERS. This is a shot of the audience in the opening session.

Mr. ANDERSON. Next picture, Charles.

And, again, what would this be depicting, to the best of your recollection?

Ms. VICKERS. This is a shot of the mayor where my present executive director, Larry Capp, is shaking his hand. Apparently, it's right after the opening session, and they're probably congratulating him on the award.

That's Larry Capp, executive director of MMAP.

Mr. ANDERSON. The person to the right of the mayor. And to the left, who is that?

Ms. VICKERS. The other gentleman is Rick Katz.

Mr. ANDERSON. And Mayor Clark is seated?

Ms. VICKERS. Correct.

Mr. ANDERSON. Mr. Chairman, those are our pictures.

The CHAIRMAN. If we could have the lights again?

Mr. ANDERSON. Mr. Chairman, at this time, I would move the admission of Respondent's Exhibits 59 through 72.

The CHAIRMAN. Is there objection to the admission of these exhibits?

Mr. BARON. No objection.

The CHAIRMAN. They'll be admitted. I gather for purposes of our being able to print them in the record, we would need both the photos and also slides, if those exist.

[The documents referred to were marked Respondent's Exhibit Nos. 59 through 72 and were received in evidence.]

Mr. ANDERSON. Ms. Royals, let me show you first a copy of what has been marked House Exhibit 189, which I believe is in evidence, but ask you if you would re-identify that.

Ms. VICKERS. Yes. This is a copy of the program from the conference on September 6 and 7, 1985.

Mr. ANDERSON. And could you turn to the page where the schedule for the morning session appears?

Ms. VICKERS. Yes.

Mr. ANDERSON. What time was the awards or the beginning of that session scheduled to begin formally?

Ms. VICKERS. On the printed program, it is scheduled for 8:55, the award presentation.

Mr. ANDERSON. Was there anything that was supposed to occur before the award presentations?

Ms. VICKERS. Before the award presentation, it was basically the pledge, invocation, and a welcome, introduction of the public and private officials that were present at the MMAP conference.

Mr. ANDERSON. So I take it, at least by the schedule, the audience should have been seated by 8:30 and the speakers at the head table prepared to begin; is that correct?

Ms. VICKERS. Yes.

Mr. ANDERSON. Do you today have any recollection of what time, in fact, the program began?

Ms. VICKERS. The program was running behind schedule. It didn't start until about 9 or a couple of minutes after 9, thereafter.

Mr. ANDERSON. And you said that you called the judge to come down for the program. Do you recall approximately how long before that you called him?

Ms. VICKERS. I called the judge about something to 9, about a couple of minutes to 9.

Mr. ANDERSON. Now, Ms. Royals, you indicated that after the speech the judge had asked you to be sure he got out in time. Do you recall why he wanted to get out?

Ms. VICKERS. He had to be in court by 10:30 because he had either a trial or a hearing.

Mr. ANDERSON. And do you recall what time his speech ended?

Ms. VICKERS. It ended about 10:15.

Mr. ANDERSON. Now, why do you recall that?

Ms. VICKERS. Because I know it takes about a good five or ten minutes, depending on the traffic in downtown Miami, to get to the courthouse. And I kept looking at my watch because he told me he wanted to be out of there by 10:15, and I kept looking at my watch and pulling on his coattail.

Mr. ANDERSON. And did you get him out on time?

Ms. VICKERS. Yes.

Mr. ANDERSON. And how did you take him out of the room?

Ms. VICKERS. I took him out through the exit doors that were shown behind the dais, which is in the catering area, out through.

Mr. ANDERSON. At the end of the judge's speech, were you watching the judge?

Ms. VICKERS. Yes. The back part of him.

Mr. ANDERSON. At any point, did you see the back part of him go down from the podium towards the audience?

Ms. VICKERS. No.

Mr. ANDERSON. Could he have gone without going all the way around the table into the audience?

Ms. VICKERS. No.

Mr. ANDERSON. Ms. Royals, let me show you what has been——

Ms. VICKERS. Excuse me. Ms. Vickers.

Mr. ANDERSON. Ms. Vickers. Explain my gap. What was your name the last time you appeared?

Ms. VICKERS. Flauren Royals, but if I don't correct you, my husband will.

Mr. ANDERSON. Having seen your husband, I appreciate the correction. [Laughter.]

Mr. ANDERSON. Ms. Vickers, let me show you what has been marked House Exhibit 190. I don't believe this is in evidence. Could you identify that exhibit for the committee?

Ms. VICKERS. This is the layout of the Hyatt Regency facilities which include the lobby area, the lower level area, and the third level, which is referred to as the mezzanine.

Mr. ANDERSON. All right. And the main ballroom, on which level is that?

Ms. VICKERS. The main ballroom is located on the lower lobby area.

Mr. ANDERSON. And is that the page that says Brickle, Flagler, Monroe & Tuttle?

Ms. VICKERS. Correct.

Mr. ANDERSON. And I take it for a large thing they can take away those walls to make it into one or more rooms as they choose; is that correct?

Ms. VICKERS. Yes.

Mr. ANDERSON. It's very hard without me being able to, so I'll have to guide you in words. But so the committee can see, could you put your finger on and then read the words where the continental breakfast would have been set up?

Ms. VICKERS. The continental breakfast would have been set up in the promenade area, which is the lower lobby area of the Hyatt Regency Hotel.

Mr. ANDERSON. And could you read the words near the doors where the public, the conference participants, would have entered?

Ms. VICKERS. Gone into the Regency Ballroom that is referred to as the pre-function area.

Mr. ANDERSON. And could you read the words immediately over the exit doors that we've been looking at?

Ms. **Vickers**. Regency Ballroom.

Mr. **Anderson**. And those are over the back wall where the service area exit is?

Ms. **Vickers**. Yes.

Mr. **Anderson**. Now, directing your attention to page 3 of that, which has the marking on it SC44A, that appears to have some drawn-in lines. Do you know who drew those in?

Ms. **Vickers**. I did.

Mr. **Anderson**. And on what occasion did you draw them in?

Ms. **Vickers**. When I went up to testify in Atlanta in April 1988.

Mr. **Anderson**. And the line that bears the wording on it "Hyatt Office," what does that represent?

Ms. **Vickers**. That particular area is the Hyatt administrative offices, where if you want to book an affair at the Hyatt, you would have to go in there.

Mr. **Anderson**. And there's a long curved line extending from the words "Regency Ballroom" to the word printed in "Elevators." What does that line depict?

Ms. **Vickers**. That's the route I took in taking Judge Hastings to and from the ballroom area.

Mr. **Anderson**. Now, Ms. Thomas has testified that there was a room set aside for staff and another room for conference speakers and what have you if they desired privacy. Do you recall and can you tell us where those rooms were on this diagram?

Ms. **Vickers**. Those rooms on this diagram is on my right-hand side, and it's the Gardenia Room. I think we had all three of those areas because they could be divided up into three different areas.

Mr. **Anderson**. And that's where you had staff telephones and——

Ms. **Vickers**. Typewriters.

Mr. **Anderson**. And if a conference participant or speaker wanted to go in and make a telephone call, that's where he or she would have had to go?

Ms. **Vickers**. Yes.

Mr. **Anderson**. Mr. Chairman, because I don't think it is in evidence, I will move the admission of House Exhibit 190 as respondent's exhibit.

The **Chairman**. Is there objection to that?

Mr. **Bryant**. We haven't seen it yet.

The **Chairman**. House Exhibit 190.

Mr. **Baron**. No objection.

The **Chairman**. It will be admitted.

[The document referred to was marked House Exhibit No. 190 and was received in evidence.]

Mr. **Anderson**. Now, Ms. Royals——

The **Chairman**. Vickers.

Mr. **Anderson**. Ms. Vickers.

Ms. **Vickers**. Thank you.

Mr. **Anderson**. I hope you'll forgive me.

Ms. Vickers, when was the first time you had occasion to recall the events of September 6, 1985, that we have just been discussing?

Ms. **Vickers**. To recall, it was after the article appeared in the Miami Herald about the judge leaking information about a wiretap.

Mr. ANDERSON. And what about that article made you recall it?

Ms. VICKERS. In reading it, it stated that the judge had told Mayor Clark at the conference in the morning session, after he got through with his speech, that his name was being dropped in Hialeah, or something to that effect.

Mr. ANDERSON. And what did you recall at that time?

Ms. VICKERS. In reading the article, I realized that the judge couldn't have given him that information at that particular time because he didn't go down into the audience, and he had to be out of there by a certain time. That was about 10:15.

Mr. ANDERSON. And did you report your recollection of that to anyone at that time?

Ms. VICKERS. Well, I informed my coworkers and my——

Mr. ANDERSON. Now, when you say your coworkers, who are there?

Ms. VICKERS. Pat Thomas, Cornelius Allen, who was my supervisor at the time.

Mr. ANDERSON. Did there ever come a time when any FBI agents talked to you about this?

Ms. VICKERS. No.

Mr. ANDERSON. Did you talk to the judge about it at the time you first recalled it?

Ms. VICKERS. Yes. During the holidays—I don't know if it was Thanksgiving or Christmas—I called the judge because at that time I was also the financial person in the office, and we had gotten a bill from the Hyatt for his room. And I wanted to make sure if he had paid it through his credit card, or if he did, then we had to reimburse him and not the Hyatt. So I was calling to clarify the bill. And after talking with him about that, I mentioned in passing, you know, that he couldn't possibly have made it at that particular time that is being alleged because that was the time that he had to be out of the opening session and back into court.

Mr. ANDERSON. And what, if anything, did he say to you at that time?

Ms. VICKERS. He said, "Yeah," he said, "and I'll get back with you."

Mr. ANDERSON. And when is the next time you had an occasion to discuss this?

Ms. VICKERS. When you came to visit me.

Mr. ANDERSON. And when was that?

Ms. VICKERS. That was some time in 1988, before I went up to Atlanta. I think it might have been March or February. I'm not sure.

Mr. ANDERSON. And you went to Atlanta and you testified there; is that correct?

Ms. VICKERS. Yes.

Mr. ANDERSON. And the testimony you gave there was full and accurate, to the best of your recollection, was it?

Ms. VICKERS. Yes.

Mr. ANDERSON. And these exhibits were marked and introduced there; is that correct?

Ms. VICKERS. Yes.

Mr. ANDERSON. And we showed the slides?

Ms. Vickers. Yes. We showed more slides, I think, because I brought up a lot.

Mr. Anderson. And thereafter you appeared before the House of Representatives?

Ms. Vickers. Yes. Last year in June.

Mr. Anderson. And you're here today?

Ms. Vickers. Yes.

Mr. Anderson. Ms. Royals, you still today recall taking Judge—Ms. Vickers, you still today recall taking Judge Hastings out the rear; is that correct?

Ms. Vickers. Yes.

Mr. Anderson. And to the best of your recollection, that was approximately 10:15?

Ms. Vickers. Yes.

Mr. Anderson. No further questions.

The Chairman. Is there cross-examination?

Mr. Baron. Yes, there is, Mr. Chairman.

CROSS EXAMINATION

Good morning, Ms. Vickers.

Ms. Vickers. Good morning.

Mr. Baron. Ms. Vickers, am I correct that your first contact with Judge Hastings on the morning of September 6, 1985, was at approximately 9 o'clock that morning?

Ms. Vickers. It probably was a couple minutes after 9:00.

Mr. Baron. A couple minutes after 9:00. And you called him from his room to come down because the program was about to begin?

Ms. Vickers. Yes.

Mr. Baron. OK. Now, am I correct that you do not know what Judge Hastings was doing prior to the time that you called him at approximately 9 o'clock?

Ms. Vickers. Correct.

Mr. Baron. So that if he had an encounter with Mayor Clark or Monsignor Walsh or both of them briefly, say between 8:20 and 9:00, you wouldn't know anything about that?

Ms. Vickers. Correct.

Mr. Baron. Now, you have no doubt Monsignor Walsh was there that day? I believe he showed up in one of your slides, didn't he?

Ms. Vickers. Yes.

Mr. Baron. OK. And he's on the program?

Ms. Vickers. Yes.

Mr. Baron. You mentioned several people were founders of MMAP. Am I correct that Mayor Clark was also one of the original founders of MMAP?

Ms. Vickers. Yes.

Mr. Anderson. OK. You said that you had read something in the paper concerning the allegation that Judge Hastings had leaked information to Mayor Clark and that sparked your interest because it didn't coincide with your recollection of how things had happened; is that correct?

Ms. Vickers. Yes.

Mr. Baron. When was that?

Ms. **Vickers**. I was trying to remember the—it was the article that was written in the Miami Herald. It was either some time the latter part of 1986 or the early part of 1987. I'm not sure as to the correct time.

Mr. **Baron**. There is an article that's in evidence that came out in the Miami Herald in March 1986.

Ms. **Vickers**. OK.

Mr. **Baron**. But I've looked at it very recently when you made your statement earlier today, and it doesn't make any reference as to Judge Hastings making the leak. So it apparently was an article some time after that. Does that help you at all in trying to figure out when it was?

Ms. **Vickers**. No. Because this article I read did state him.

Mr. **Baron**. And the article indicated that Judge Hastings, it was alleged Judge Hastings had leaked information to Mayor Clark about a wiretap after his speech, and you recognized that that didn't coincide with your recollection; is that correct?

Ms. **Vickers**. Yes.

Mr. **Baron**. Did you contact the FBI about that to let them know that there must be something wrong here?

Ms. **Vickers**. No.

Mr. **Baron**. I have no further questions.

The **Chairman**. Is there redirect examination?

Mr. **Anderson**. I'll leave it to the committee. No, there's no redirect.

The **Chairman**. I have no questions of Mrs. Vickers. Senator Specter?

The **Vice Chairman**. No, thank you, Mr. Chairman.

The **Chairman**. Any committee member have a question of Mrs. Vickers?

[No response.]

The **Chairman**. Is there any reason Mrs. Vickers cannot be excused at this time?

[No response.]

The **Chairman**. If not, we appreciate your testimony very much, and we do excuse you.

[Witness excused.]

The **Chairman**. If the respondent would please call his next witness?

Mr. **Anderson**. Mr. Chairman, if I might just briefly mark my copy of House Exhibit 190 with Respondent's 73 so it will be clear how it came in, and we'll then pass these to the clerk.

Mr. Sumpter. Ms. Williams will examine.

The **Chairman**. Mr. Sumpter, would you come forward and raise your right hand, please? Right there's fine. Do you, Lanny Sumpter, swear and affirm that the evidence you shall give in the case now pending between the United States and Judge Alcee L. Hastings shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. **Sumpter**. I do.

The **Chairman**. Please be seated.

TESTIMONY OF LANNY SUMPTER

DIRECT EXAMINATION

Ms. **Williams**. Good morning, Mr. Sumpter.

Mr. **Sumpter**. Good morning.

Ms. **Williams**. Where do you reside?

Mr. **Sumpter**. In Tampa, Florida.

Ms. **Williams**. And how are you employed?

Mr. **Sumpter**. Well, I'm presently employed—I own two McDonald's restaurants in Tampa.

Ms. **Williams**. All right. How were you employed in September 1985?

Mr. **Sumpter**. I was executive director of the Metro Miami Action Plan.

Ms. **Williams**. Were you present at the MMAP annual convention in September 1985?

Mr. **Sumpter**. Yes, ma'am.

Ms. **Williams**. Now, when did you first see Judge Alcee Hastings in conjunction with that convention?

Mr. **Sumpter**. It was the night before the convention began. The judge arrived early and spent the night there.

Ms. **Williams**. Did you have any conversation with him on that evening?

Mr. **Sumpter**. Yes, we did. In fact, he informed us that I think it was his birthday.

Ms. **Williams**. That would have been September 5th, right?

Mr. **Sumpter**. Right.

Ms. **Williams**. All right.

Mr. **Sumpter**. The night of September 5th. He informed us that it was his birthday, and, of course, we all wished him well and thanked him for making the sacrifice to be there on his birthday.

I think he also informed us that he had to leave the conference somewhat early because of his duties as a judge.

Ms. **Williams**. Now, do you know what arrangements were made regarding that need for him to leave the conference early?

Mr. **Sumpter**. Well, I had assigned Pat Thomas, of course, to coordinate and be responsible for the conference. As I understand it, she assigned Joy Royals to make sure the judge was able to get out of there very quickly and got squared away.

Ms. **Williams**. Thank you.

Now, where were you when the judge concluded his speech?

Mr. **Sumpter**. If memory serves me correctly, I was at the back of the room, working my way down front very quickly, and then back out. I was moving.

Ms. **Williams**. Do you have any recollection of seeing him come down off the podium and go into the audience and have a chat with Steve Clark?

Mr. **Sumpter**. No, I don't.

Ms. **Williams**. Were you in a position to have seen that?

Mr. **Sumpter**. Probably about as much as anyone. I don't recall seeing it. Again, I was back and forth.

Ms. **Williams**. Now, can you state for a fact that he did not come down into the audience and speak with Steve Clark?

Mr. SUMPTER. No, I can't.

Ms. WILLIAMS. Do you have any reason to believe that, he did not?

Mr. SUMPTER. That he did not?

Ms. WILLIAMS. That he did not.

Mr. SUMPTER. Well, yeah. Only the fact that Joyette came to me immediately after escorting the judge out and told me she rushed him right out.

Ms. WILLIAMS. All right.

Mr. SUMPTER. After he spoke, she got him to his car. She reported to me that she had gotten him out.

Ms. WILLIAMS. All right. Thank you.

Did you have any conversation with the FBI after that MMAP convention?

Mr. SUMPTER. Yes, I did.

Ms. WILLIAMS. And what was that about? What did that entail?

Mr. SUMPTER. Well, the first time the FBI contacted me, I was out of town, and I instructed one of my staff, Cornelius Allen, whatever they needed to make it available for them. And if I recall correctly, I spoke with one of the agents, and he simply made arrangements to meet with me when I got back, at which time he asked me only a couple of questions that I recall. And I think it came down to whether or not I had seen the judge and the mayor together, were basically the questions that he asked me about.

He asked me about the time the judge spoke, which I told him was approximately 9:30, 9:35 in the morning. I think that's about it. He didn't have a lot of questions—he was also looking for a video.

Ms. WILLIAMS. They were looking for a video?

Mr. SUMPTER. Yeah, they were looking for a video.

Ms. WILLIAMS. All right. Now, did you tell them about the arrangements that had been made on September 5th in order to ensure the judge left the speech quickly after his speech concluded?

Mr. SUMPTER. I do not recall if we discussed that.

Ms. WILLIAMS. Did they ask you about that?

Mr. SUMPTER. I do not—I don't think so. I don't recall us discussing that.

Ms. WILLIAMS. Did you tell the FBI about the existence of photographs when they were asking you about videotapes?

Mr. SUMPTER. No, I didn't. That wasn't asked.

Ms. WILLIAMS. You weren't asked——

Mr. SUMPTER. It didn't occur to me.

Ms. WILLIAMS [continuing]. So you didn't volunteer?

Mr. SUMPTER. No.

Ms. WILLIAMS. Now, did the FBI tell you that their interview with you was confidential and you couldn't discuss it with anyone?

Mr. SUMPTER. Not that I recall.

Ms. WILLIAMS. Did they express any concern regarding protecting the judge's reputation or Steve Clark's reputation?

Mr. SUMPTER. No. I don't think we got into that at all. I think he was—he treated it as fairly routine with me, you know. He tried to make me comfortable, more or less.

Ms. WILLIAMS. All right. When you were in Miami, were you aware of the judge's reputation in his community?

Mr. **SUMPTER**. I think so.

Ms. **WILLIAMS**. And what was that reputation, sir?

Mr. **SUMPTER**. Well, I think the judge was considered very—I don't know if the word was "outspoken," but the judge was considered to be one that would speak—that would tell it like it is, so to speak, I guess is what I'm getting at. He was considered to be one that would say it just like it was.

Ms. **WILLIAMS**. All right. Do you have any personal opinion regarding the judge's character?

Mr. **SUMPTER**. Yes, I do.

Ms. **WILLIAMS**. Would you please express that to the Senators?

Mr. **SUMPTER**. I have a great deal of respect for the judge. It's that simple.

Ms. **WILLIAMS**. Thank you, sir.

The **CHAIRMAN**. Is there cross-examination of Mr. Sumpter?

Mr. **SYNAR**. No questions, Mr. Chairman.

The **CHAIRMAN**. Are there questions from the committee? Senator Lieberman?

EXAMINATION BY THE COMMITTEE

Senator **LIEBERMAN**. Just one very briefly, Mr. Sumpter. On that morning, do you remember when you first saw Mayor Steve Clark?

Mr. **SUMPTER**. I'm a little uncertain. I think it was before—just prior to us actually beginning. If memory serves me correctly, I think the mayor was a little late, but I'm not really sure.

Senator **LIEBERMAN**. Do you remember where you saw—do you think it might have been—so the program began a little before, around 9, as I heard it here, and your recollection is that you saw him a little bit before the program began.

Mr. **SUMPTER**. I think, but I'm a little hazy on that.

Senator **LIEBERMAN**. I understood.

Mr. **SUMPTER**. I was running around that day.

Senator **LIEBERMAN**. I understood. So your recollection is that he may have arrived a little late?

Mr. **SUMPTER**. Yeah. We did not start on time for sure.

Senator **LIEBERMAN**. Right.

Mr. **SUMPTER**. We were running about 30 minutes late, and there were a number of folks that were late that morning, if my memory serves me correctly, including the mayor.

Senator **LIEBERMAN**. Is that part of the reason why the program started late?

Mr. **SUMPTER**. Well, yeah. That was part of the reason, but also another part of the reason was that my boss, the county manager, was there and was very concerned that we did this—he was really concerned that this came off beautifully for the community.

Senator **LIEBERMAN**. Right.

Mr. **SUMPTER**. And, as such, he wanted to know every detail of everything I had planned and in place.

Senator **LIEBERMAN**. So there was some time going on that before it started. And when you saw Mayor Clark for the first time, was it in the ballroom where the program was going to occur?

Mr. **SUMPTER**. I don't recall. I don't—I'm not sure.

Senator **LIEBERMAN**. Was he alone at the time you saw him?

Mr. SUMPTER. I think so. I think when I saw him he was.

Senator LIEBERMAN. OK. No further questions.

The CHAIRMAN. Are there other questions from the committee?

[No response.]

The CHAIRMAN. If not, is there any reason that Mr. Sumpter cannot be excused as a witness?

[No response.]

The CHAIRMAN. If not, you are excused. Thank you very much for your testimony. We appreciate it.

[Witness excused.]

Mr. SYNAR. Mr. Chairman?

The CHAIRMAN. Yes?

Mr. SYNAR. The House has to vote right now. We should be able to be back here in around 15 minutes.

The CHAIRMAN. We will recess while the House managers go and vote.

[Recess.]

The CHAIRMAN. The committee will come to order.

I am informed that the House will have another vote here in a very few minutes. So if counsel for respondent would go ahead with their next witness.

Ms. WILLIAMS. We call Robert Ruiz.

The CHAIRMAN. Would you raise your right hand, please? Do you, Robert Ruiz, swear and affirm that the evidence you shall give in the case now pending between the United States and Judge Alcee L. Hastings shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. RUIZ. I do.

The CHAIRMAN. Please be seated.

Mr. RUIZ. Thank you.

Ms. WILLIAMS. Good morning, Mr. Ruiz.

TESTIMONY OF ROBERT RUIZ

DIRECT EXAMINATION

Mr. RUIZ. Good morning.

Ms. WILLIAMS. Where do you reside?

Mr. RUIZ. I reside 1400 West 41st Street, Hialeah, Florida.

Ms. WILLIAMS. And how are you employed?

Mr. RUIZ. I'm an electrical contractor, R&H Electric.

Ms. WILLIAMS. In 1985, in September, were you in any way connected with MMAP?

Mr. RUIZ. Metro Miami Action Plan had four co-chairpersons. I was one of them.

Ms. WILLIAMS. All right. Do you recall the annual convention of MMAP back in 1985?

Mr. RUIZ. I do.

Ms. WILLIAMS. Did you attend that convention?

Mr. RUIZ. I did.

Ms. WILLIAMS. Do you recall where you were seated when Judge Hastings gave his speech at that convention?

Mr. RUIZ. Well, usually, like, you know, at conferences that MMAP has, most of the co-chairs are either sitting at the dais or walking around making sure that everything is OK. Most of the time that the judge was speaking, I was in the back of the room or going back and forth.

Ms. WILLIAMS. All right. Do you have any recollection of seeing Judge Hastings and Steve Clark speaking on that particular day, either before his speech or after?

Mr. RUIZ. I remember seeing the judge and I remember seeing the mayor, but I don't remember seeing them speaking.

Ms. WILLIAMS. All right. Now, there's been some testimony about arrangements that were made for the judge to leave after his speech. Do you have any knowledge regarding that?

Mr. RUIZ. OK. The usual procedure, we usually assign a staff person to be with the speaker at any conference and one of the co-chairs to be with him at all times, or close by. I had to do that a few years ago with the mayor of Atlanta. I had to go pick him up at the airport. We usually bring them through the back, and most of the time they exit to the back of the room, too.

Ms. WILLIAMS. So these are not extraordinary arrangements?

Mr. RUIZ. No. We always do that.

Ms. WILLIAMS. Are you aware of the judge's reputation in his community?

Mr. RUIZ. Yes.

Ms. WILLIAMS. What is that reputation, sir?

Mr. RUIZ. Very good reputation.

Ms. WILLIAMS. Nothing further. Thank you very much.

Mr. RUIZ. Thank you.

The CHAIRMAN. Is there cross-examination—Mr. Ruiz, I believe they will have a few other questions. [Laughter.]

Mr. RUIZ. I have to go back to work, Senator.

The CHAIRMAN. We sympathize with that concern.

Go ahead, Representative Synar.

CROSS EXAMINATION

Mr. SYNAR. I will be very brief, given that exit.

Mr. Ruiz, were you at the registration area prior to the morning program?

Mr. RUIZ. I came into the conference just about when they were closing out registration.

Mr. SYNAR. What time was that?

Mr. RUIZ. Oh, close to 8 o'clock?

Mr. SYNAR. Eight o'clock?

Mr. RUIZ. Uh-huh.

Mr. SYNAR. All right. And when did you first see Mayor Clark on the morning of September 6th?

Mr. RUIZ. Right after the judge had begun his speech.

Mr. SYNAR. All right. And——

Mr. RUIZ. He was sitting in the front.

Mr. SYNAR. The judge——

Mr. RUIZ. Excuse me, no. He was sitting in the front with some other dignitaries.

Mr. SYNAR. And where was that that you saw him?

Mr. RUIZ. I was looking from the back of the room.

Mr. SYNAR. OK. But where was Mr. Clark?

Mr. Ruiz. The dais—he was sitting in the front row in front of the dais.

Mr. Synar. OK. Thank you, Mr. Ruiz.

The Chairman. Are there any other questions, any more direct examination of the witness?

Ms. Williams. There is not.

Senator Durenberger. Mr. Chairman?

The Chairman. Yes. Senator Durenberger?

Senator Durenberger. A question out of curiosity, in case I missed something.

You did not see Mayor Clark receive an award?

Mr. Ruiz. I was out of the room at the time. See, usually, we have the awards presentation given at the luncheon, but that particular conference we made a special deal because we were giving awards to the mayor of Miami and the mayor of the country. And they had other engagements to go to.

The Chairman. Are there other questions from members of the committee?

[No response.]

The Chairman. Any reason this witness cannot be excused?

Ms. Williams. There is not.

The Chairman. If not, you are excused, Mr. Ruiz.

Mr. Ruiz. Thank you, sir.

[Witness excused.]

The Chairman. Would respondent please call its next witness.

Ms. Williams. We call Judge Alcee Hastings.

The Chairman. Judge Hastings.

Judge Hastings. Yes, Mr. Chairman.

The Chairman. Do you, Alcee L. Hastings, swear and affirm that the evidence you shall give in the case now pending between the United States and Judge Alcee L. Hastings shall be the truth, the whole truth, and nothing but the truth, so help you God?

Judge Hastings. I do, Mr. Chairman.

The Chairman. Please be seated.

TESTIMONY OF JUDGE ALCEE L. HASTINGS

DIRECT EXAMINATION

Ms. Williams. Judge Hastings, let's go directly to the primary question. When you were present at the MMAP convention on September 6th, did you tell Steve Clark anything about a wiretap——

Judge Hastings. Absolutely not.

Ms. Williams [continuing]. Prior to your speech?

Judge Hastings. I didn't tell Steve Clark anything about a wiretap at any point in time ever.

Ms. Williams. All right. Now, what time did you arrive at the Regency Hyatt to give your speech?

Judge Hastings. On the night of September 5th, which was my birthday.

Ms. Williams. Yes. And what conversation did you have on that evening and with whom?

Judge Hastings. When I arrived at the conference, I went down to the area where the persons were preparing the packages that go to participants at the conference. And I stayed with them, I would think, as much as an hour-and-a-half, maybe even two. As a matter of fact, I even helped stuff envelopes, and someone gave me a shirt that bore the name "MMAP." And I spoke with Lanny Sumpter and with Patricia Thomas about what they expected of me in terms of being able to facilitate the program.

Ms. WILLIAMS. All right. And did you tell them of your need to leave the conference early?

Judge HASTINGS. On that particular evening, I distinctly remember telling both of them, and another individual named Patricia whose last name I don't recall, as well, that I was involved in a trial and that I had to get back to court by 10:30. And no matter what the situation was, I wanted to be out of there.

Ms. WILLIAMS. Now, on the morning of September 6th, did you see Steve Clark?

Judge HASTINGS. Yes, I did.

Ms. WILLIAMS. When and where was that?

Judge HASTINGS. I saw Mayor Clark at some point during the morning. I had been advised that I would have a program person that would call and ask me to come downstairs. I came downstairs of my own volition to circulate in the crowd. I saw Mayor Clark and Monsignor Walsh, and we converged almost at an identical moment in the area of the promenade, as has been pointed out by Representative Synar. And I exchanged greetings with them and informed them that since both of them had either coffee or juice that I was going to catch up with them.

I left the Monsignor's left. He's facing me this way, and he was going straight, it does appear, and Mayor Clark left in another direction. I might add I also on that morning spoke to and saw other people, went back up to my room to await the call from whoever was to call me at that time, and I didn't know that it was going to be Ms. Vickers until such time as she called.

Ms. WILLIAMS. All right. Now, after you concluded your speech—pardon me. Was there any conversation regarding a wiretap or anything along those lines——

Judge HASTINGS. No.

Ms. WILLIAMS [continuing]. When you saw Steve Clark and Monsignor Walsh?

Judge HASTINGS. No. When I saw Monsignor Walsh, I recognized him. The only other time I had been in his presence was at a Cuban American Foundation program where both of us participated in a Saturday morning conference. I knew his reputation very well. And I also in my lifetime had done work with former Archbishop Carroll. And in a teasing manner, I called Monsignor Walsh the appellation that goes—more than an appellation—the protocol required of an archbishop. And I said to him "Excellency," and I was teasing him. And then I turned to Mayor Clark, and I said, "I guess I should call you 'Excellency' as well, Mayor Clark," and shook hands with both of them, and whatever we said in the way of courteous things to each other who meet and greet at a given time that is all exchanged. I never had an opportunity to speak with Mayor Clark personally, and certainly at no time after I spoke could I possibly have spoken with him.

Ms. WILLIAMS. Did you go down from the podium into the audience after you concluded your speech?

Judge HASTINGS. No, I did not.

Ms. WILLIAMS. Is Ms. Vickers correct that she escorted you out through the back, through a back entrance?

Judge HASTINGS. She is also correct about pulling me on my coat.

Ms. WILLIAMS. All right.

Judge HASTINGS. And the only persons that I have a distinct memory of shaking their hands at all after I spoke were Merritt Sterheim, who was either then the county manager or just had been the county manager, or Jesse McCrary. And I waved at two people that I remember. One is Wilhelmina Trible, and the other is Mrs. Athely Range. If anyone else shook my hand, it would be that they came up on the podium or around the front of the podium. But, physically, there was no way for me to have gotten down. And the simple fact is I did not leave the podium. I went out the back exit through the service area to my car where the young people had my car waiting for me.

Ms. WILLIAMS. Judge Hastings, is Steve Clark a friend of yours?

Judge HASTINGS. Steve Clark is not a friend of mine. I know his reputation as he knows my reputation, and that is as persons who have some function in Government or otherwise. And that's the only way I know his reputation.

Ms. WILLIAMS. Has Steve Clark ever visited you in your chambers?

Judge HASTINGS. Steve Clark has never visited me in my chambers.

Ms. WILLIAMS. Now, there has been some testimony that Steve Clark did not cooperate in wearing a bug and coming to your chambers. Can you comment on that?

Judge HASTINGS. My only comment would be that Mayor Clark, had he worn such a bug, doubtless would know that there would be no way on earth that I would discuss anything with him with reference to substantive matters, confidential or otherwise. And had he come to me not having done so before, I would have been completely taken aback because I don't receive such visits on a regular basis from any functionaries in Government, and certainly not as it pertains to any litigation.

Ms. WILLIAMS. And has Steve Clark ever visited you at your home?

Judge HASTINGS. No.

Ms. WILLIAMS. Has he ever telephoned you at your chambers?

Judge HASTINGS. Never.

Ms. WILLIAMS. Has he telephoned you at your home?

Judge HASTINGS. No, he had not telephoned at my home. I can't occasion that there would be any reason for Mayor Clark to call me at home. We have no alliances whatsoever.

Ms. WILLIAMS. Are you social acquaintances?

Judge HASTINGS. No. The only times I've seen Steve Clark other than on that particular morning are at similar affairs. I can only recall having shaken his hand twice before in my life, and I recall the event where he says we waved on the expressway because I honked my horn and got his attention to wave at him at that point in time. But there would have been no occasion for us to visit with each other on any social setting whatsoever.

Ms. **Williams**. Judge Hastings, what is your opinion of Steve Clark as mayor of Dade County?

Judge **Hastings**. Ms. Williams, I'm sort of like Judge King was yesterday. Far be it from me to give an opinion of Steve Clark. I am the person that's the subject of these proceedings. Suffice it to say that I think the record speaks for itself regarding the mayor, and I choose not to, unless someone asks me, to give my opinion. I don't think it bears on these proceedings.

Ms. **Williams**. Did you perceive any need to protect Steve Clark?

Judge **Hastings**. None whatsoever. Absolutely not.

First off, let's get it very clear. I heard the testimony of Mr. Martinez and Special Agent Santini, and everything that they have said, to the best of my recollection, is what occurred when they presented me with the progress reports.

Ms. **Williams**. Well, I'd like to direct your attention to the comments that they said you made as you signed various progress reports. Can you explain to the Senators why you made those comments?

Judge **Hastings**. Indeed, I can. First off, with reference to Kevin Gordon, his nickname was Waxy, W-a-x-y, which are the call letters for a radio station in south Florida. And I commented—I was amused that anyone would be named Waxy, and I commented about that for the reason that I felt that he, like a radio, was a talkative individual.

And, further, I've heard it testified here that I would have concern, that I seemed concerned about Steve Clark. The only reason I mentioned Steve Clark was that he was the political figure that was mentioned in this particular matter. And no other of the persons who were the subject of the wiretap were as prominently known to me as was Mayor Clark. So it's only in the connection of his prominence that I mentioned his name, not out of concern. I have no concern for him.

I do have concern for substantial numbers of litigants that appear before me, as well as lawyers, and I've had lawyers who I went to high school with and a law school classmate of mine that I ruled against in a discrimination suit against Dade County, and I watched him lose that suit and it hurt me to my heart not to be able to tell him the things that would help him to win. But I couldn't do that because of my responsibility.

The same, Jesse McCrary, whose name has come up here often. Jesse lost a case before me, and we are great friends, as it is. And his fee was rather substantial, and there were things that I expressed confidence to him about or he could very well, within the ambit of my discretion, have won that lawsuit.

So I find it passing strange, and, quite frankly, I'm offended that there is even a reference that I would say anything to Steve Clark. I have no association with him, and to put it bluntly, not because of these events, but I have no reason to hold him out as a person in leadership that I would follow.

Ms. **Williams**. What about political favors, Judge Hastings? Has Steve Clark performed any political favors for you at any point in time?

Judge **Hastings**. Steve Clark hasn't done anything for me, and I haven't done anything for Steve Clark. I heard him say that he wrote a letter on my behalf when I was seeking to become a United States District Court judge. I've not seen the letter. If it exists, I don't doubt that because there were persons, as would be the case with any person in that position, who sought others to write letters on my behalf.

What I believe happened is the same thing that must have happened for Judge Eugene Spellman, Judge James Kohol, and Judge Edward Davis. We were all being carried through the process, and the FBI in their background check goes to any number of persons who know or do not know people and asks them their opinion about the potential nominee. And that's how I believe Steve Clark's name comes up, but not as someone who advanced or was requested, certainly not by me, to write a letter. And, again, that was way back in 1979.

Ms. WILLIAMS. All right. Now, in July 1985, what knowledge did you have regarding an investigation in Hialeah that involved Steve Clark and Peter Ferguson?

Judge HASTINGS. If I had any knowledge at all about this matter—and I was asked that question at Judge Roney's inquiry pursuant to the Judicial Council Disability and Reform Act—the only knowledge that I gained regarding Mayor Clark's and Peter Ferguson's involvement would have come at some point in time during the progress reports as they were presented to me. So in early July, if there was anything in either of the affidavits or the initial authorization, whatever information in there is all I had. And whenever any other information came up, that's all I had. Period.

Ms. WILLIAMS. All right. Now, do you know Glenn Whittle?

Judge HASTINGS. I don't know Glenn Whittle. I know his name only from having read his name in these proceedings.

Ms. WILLIAMS. Well, prior to having read the names in the proceedings, did you know Peter Ferguson?

Judge HASTINGS. No. I did not know Peter Ferguson or Glenn Whittle, and the first time I ever heard their names was in connection with this particular proceeding.

Ms. WILLIAMS. What about Tom Dowd?

Judge HASTINGS. I don't know Special Agent Dowd and had never had an occasion to be in his presence, to my knowledge.

Ms. WILLIAMS. Now, Judge Hastings, are you aware of the time inconsistency in this case as regards when the alleged disclosure occurred; is that correct?

Judge HASTINGS. I'm not only aware. I'm the person that made everybody else aware, including the FBI.

Ms. WILLIAMS. Yes, sir. And you're aware of the other factual conflicts that exist; is that correct?

Judge HASTINGS. Of course I am.

Let me make it clear to you, Ms. Williams, and to the chairman and the Senators. The testimony with reference to Monsignor Walsh, when I learned that I was under investigation in this particular matter, I searched my memory as best I could to determine exactly who was at the affair that I could remember and whether or not I had spoken with Mayor Clark at all before or after. And this was after I knew that his statement about me coming down from the podium and speaking to him after the phone call, the 8:58

phone call that has been testified to here about, and before I went before Judge Roney's committee.

I personally remember having seen him in the presence of Monsignor Walsh. I went to Monsignor Walsh's apartment, requested an appointment with him to speak with him personally. When I spoke with the Monsignor, in addition to a very fine visit on intellectual and ecumenical things, I put to him why I was there, and he informed me that he had a distinct memory of at least us having spoken and no opportunity for us to have spoken privately.

I then told Professor Anderson before I said anything to you or to my Mama that I remembered seeing Monsignor Walsh. My recollection is that Professor Anderson took it upon himself to do likewise, and that is to visit with Monsignor Walsh. And when we were before Judge Roney's committee, that is the first time that the authorities had any information—Judge Smith who was conducting that investigation, that's the first time they had any information at all that I had even spoken with Steve Clark.

Now, I've been accused too often of being a manipulator in this process, and if I had been manipulative, I can assure you I could very well have left Monsignor Walsh out of this proceeding. You wouldn't have known, and Terry wouldn't have known, and no one else in this room would have known. So when I brought that discrepancy up, I brought it up in an effort to assure that the truth with reference to these proceedings would be had.

Ms. WILLIAMS. Judge Hastings, please express to the Senators your reaction to the Article XVI which alleges that you leaked the wiretap to Steve Clark.

Judge HASTINGS. I can understand, accept, and deal with things such as exist within the framework of the original 15 Articles, the 15 Articles of impeachment numbering I through XV. I came to Washington, I went home from Baltimore, I made some phone calls, I called somebody, Bill Borders, on October whenever it was, the 8th from Albany, Georgia. Those are actions that are clear, that are left to different testimony, and the awesome responsibility of the Senate committee.

But for something that there is no action on my behalf, and to try to prove a negative, I'm offended by it. And suffice it to say that I don't think it should have been an Article of Impeachment, not only because I did not tell Steve Clark anything, but the simple fact of the matter is that I'm more than offended that that Article exists.

Ms. WILLIAMS. I have nothing further. Thank you, Judge Hastings.

The CHAIRMAN. Is there cross-examination of the witness?

Mr. BRYANT. Yes.

CROSS EXAMINATION

Judge Hastings, I believe that you testified earlier to the committee that the sole source of your information about Kevin Waxy Gordon was the progress reports and the other documents submitted to you by the United States Attorney's Office and the FBI; is that correct?

Judge HASTINGS. That would have been my sole source until such time as Milt Shoshin came to me when the leak of the grand jury proceedings took place.

Mr. BRYANT. And, of course, you knew that all this information was very confidential and highly sensitive?

Judge HASTINGS. No question.

Mr. BRYANT. And that the wiretap information, Article III information, in fact, is always super-sensitive?

Judge HASTINGS. There is no question about that. I think the Congress has announced its intentions. All of the legislative history on it suggests confidentiality. And, Representative Bryant, the lawyer that handled my Title III matter in the trial was Professor Blakey from Notre Dame who, in part, was scrivener of Title III. So I know its confidentiality and have no reason to breach it, then or now.

Mr. BRYANT. You were aware of the fact that you were legally as well as ethically bound. I think you've testified to this——

Judge HASTINGS. No question.

Mr. BRYANT [continuing]. In front of Judge Roney——

Judge HASTINGS. No question. I testified in my trial before Judge Gignoux and the jury that I understood Title III matters to be confidential, yes, sir.

Mr. BRYANT. I think you also went so far as to observe that a judge who would have revealed the information which he learned in the course of supervising a wiretap should be removed from office; is that correct?

Judge HASTINGS. I have said that. I meant it when I said it, and I mean it now. As a matter of fact, if you recall, the one article that we did not contest is Article XVI. And the reason that we did not is that I told Terence Anderson and Professor Catz that I think, in spite of how they felt, that this particular matter, if it would be determined that I or any other judge disclosed the confidentiality of a Title III wiretap, he or she ought to be removed from office, in my opinion.

Mr. BRYANT. Judge Hastings, you just testified a moment ago that the testimony which you listened to and that the committee heard from Geoffrey Santini——

Judge HASTINGS. Yes, sir.

Mr. BRYANT [continuing]. From Robert Martinez——

Judge HASTINGS. Yes, sir.

Mr. BRYANT [continuing]. With regard to the presentation to you of affidavits, the going over of progress reports and the information in them, and the responses from you about them were accurate.

Judge HASTINGS. Essentially accurate, or I have no reason to dispute them at all. And while I don't have a distinct memory the way that they do, I can assure you I have no reason to refute anything that either of them said regarding what transpired during the progress reports.

Mr. BRYANT. Well, then, I'll be brief in making a reference to it.

Judge HASTINGS. All right.

Mr. BRYANT. It was true, was it not, that in the August 15th progress report there were reports which you read that Waxy Gordon was saying that he had Mayor Clark in his pocket. Is that correct?

Judge HASTINGS. I read in cursory fashion as much information as I thought was necessary, and I think something else needs to be said here. I have and had great respect for Bob Martinez as a lawyer, and I had no reason to believe that he would be snookering me, and I don't believe he did or would intentionally do so. And so in that sense, I did not read line for line. But let me make it very clear. I read about Waxy Gordon. I read about Steve Clark. I made the comments, I believe, that Special Agent Santini and Attorney Martinez said that I said.

Mr. BRYANT. I wanted to suggest a possible correction in what you just said a moment ago. It sounded as though you said, "I haven't had great confidence in United States Attorney Martinez."

Judge HASTINGS. Oh, no, no, no, no.

Mr. BRYANT. I don't think you mean to say that.

Judge HASTINGS. I hope that you misunderstood me because I said, "I have and had great confidence in his ability as a lawyer."

Mr. BRYANT. Now, in fact, you told Agent Santini at that point, that's when you made the statement that Waxy is like the radio station, and if he doesn't stop talking, he's going to get everybody, including the mayor, in trouble——

Judge HASTINGS. Indeed.

Mr. BRYANT [continuing]. Wasn't that right?

Judge HASTINGS. Indeed.

Mr. BRYANT. Then, again, on August 29th, I think there were references to Mayor Clark in the progress report again; is that correct?

Judge HASTINGS. That is correct.

Mr. BRYANT. That was the time when you were reported to have—that is, when Mayor Clark was reported to have met Johnny Rivero and to have given Waxy the name of a contact in Hialeah. Do you remember that one?

Judge HASTINGS. I don't remember all of the details, but I do remember saying that if this guy Waxy doesn't stop talking, he's going to get the mayor in trouble. And Mr. Martinez said to me that the mayor walked into this, or words to that effect. And I don't have a distinct memory of everything that was said and done, but I don't dispute what Mr. Martinez or Special Agent Santini said.

Mr. BRYANT. Do you recall after having left the bench and gone into the chambers and talking to Mr. Martinez you made the comment that "This is pretty heavy stuff"?

Judge HASTINGS. I believe I made that statement. And I'll tell you this: It was and is. Heavy stuff.

Mr. BRYANT. Mr. Chairman, we're in the midst of a House vote at this time, and I wonder if it would be a good point to take a recess.

The CHAIRMAN. We will. In light of that fact, the committee was scheduled to recess at 12:00. I think realistically we need to recess until after the lunch, and because of the schedule of the Republican and Democratic caucuses, I think we'll convene again at 2:15.

Mr. BRYANT. Thank you, Mr. Chairman.

The CHAIRMAN. So we'll stand in recess until 2:15.

[Whereupon, at 11:45 a.m., the committee recessed, to reconvene at 2:15 p.m., this same day.]

AFTERNOON SESSION

The CHAIRMAN. The committee will reconvene.

At this time, Representative Bryant, if you would continue with your cross-examination of the witness.

Mr. BRYANT. Judge Hastings, prior to the break, I had discussed with you the progress reports of the month of August, specifically, I believe, the progress reports of August 15th, August 29th, in which you had acknowledged that the recitation of events by Geoff Santini and Bob Martinez were accurate.

Judge HASTINGS. Yes, sir.

Mr. BRYANT. And that your responses to them in chambers acknowledging that you had noted with some interest the fact that Mayor Clark was being repeatedly mentioned and that Waxy was mentioning him in those progress reports was, in fact, a true characterization of your——

Judge HASTINGS. I think essentially it's true.

Mr. BRYANT. I would like to bring you now up to September 5th, the progress report on the day before you saw Mayor Clark at the MMAP meeting, at the conference where you saw him on that morning. I think on September 5th, the day before, you were presented with another progress report; is that correct?

Judge HASTINGS. You would have to show it to me, Representative Bryant.

Mr. BRYANT. Let me show you House Exhibit 180.

Judge HASTINGS. All right, sir.

Mr. BRYANT. I'll let you tell the committee what it is.

Judge HASTINGS. This is progress report Miscellaneous No. 412, and this is my signature, and the date's that on here is the 5th of September. I don't know that this was delivered to me on the 5th, but that's the date of the signature.

Mr. BRYANT. Well, Judge, this is a progress report dated the 5th of September and signed by you.

Judge HASTINGS. I'm not denying that.

Mr. BRYANT. Well, I just don't want to leave any doubt here. You received this progress report on the 5th of September, did you not?

Judge HASTINGS. Let me make it very clear to you. The 5th of September happens to be my natal day, and I remember most of those, but I don't remember every 5th of September what I did at every time. But let's make it clear, Representative Bryant. I signed that the date I put on there. That's my signature where the 5th is. My guesstimate is that I had that progress report at that time. No question.

Mr. BRYANT. OK. Fine. Now, in that September 5th progress report, almost the first thing in the summary of pertinent activity, at Page 3, Paragraph 8, is a report that Waxy Gordon had stated that he had made a connection with the Hialeah Zoning Commission through Mayor Clark. Do you recall that?

Judge HASTINGS. No. Not as you are saying it to me. I'm absolutely certain whatever is in the progress report I may be cursorily aware of on the date of September 5th at that particular year. But as you speak to me, I'm not aware of that.

Mr. BRYANT. Well, I'll read to you from Paragraph 2 of page 3 in order that there be no doubt about it.

"On August 29, 1985, at 12:03 p.m., Kevin Gordon received an incoming telephone call on 305-861-4863 from Gino. Waxy stated that he had looked at several areas in Hialeah. Waxy further stated that he had made a connection with the Hialeah Zoning Commission through Mayor Clark, and that if they had any zoning problems, they'll be handled."

You don't dispute that that is in this progress report on September——

Judge HASTINGS. I don't dispute anything that is in that progress report at all.

Mr. BRYANT. OK. I'll take you, then, to page 5, paragraph 15.

Judge HASTINGS. Let me say that you're taking me somewhere that I am not able to go with you. If you would let me look at it, then maybe I can help.

Mr. BRYANT. I'll be glad to do that.

Judge HASTINGS. All right.

Mr. BRYANT. If you'd like to read paragraph 15 to the committee instead of me, I'd be happy to have you read it to them.

Judge HASTINGS. Thank you, Mr. Representative.

"On August 29," Mr. Chairman and Senators, "1985, at 5:16 p.m., Johnny Rivero placed an outgoing telephone call from 305-947-0818 to 305-754-1381 and spoke with Kevin Gordon (Waxy). Waxy stated that he gave Gino the whole story about the mayor and Hialeah. Waxy then added that maybe we can drive him through Hialeah."

Mr. BRYANT. Judge, I'd like to ask you to turn to page 7 on the same progress report of September 5th.

Judge HASTINGS. Fine, sir.

Mr. BRYANT. And read from Footnote No. 2.

Judge HASTINGS. Footnote No. 2, as requested by Representative Bryant, is that "On September 3, 1985, at approximately noon, Gino and Johnny Rivero met with Kevin Gordon (Waxy). Waxy drove Gino and Rivero through Hialeah and indicated several properties suitable for the amusement project. Waxy further stated or told Gino that Steve Clark's man in Hialeah was Silvio Cardoso, a councilman in Hialeah."

Mr. BRYANT. Now, Judge, having read these three portions of the progress report, you would acknowledge, would you not, that these references in the report were presented to you the day before you saw Mayor Clark at the MMAP conference?

Judge HASTINGS. I would acknowledge that.

Mr. BRYANT. And do you recall what Mayor Clark said that you told him?

Judge HASTINGS. What Mayor Clark said here in these proceedings that I told him?

Mr. BRYANT. And repeatedly in previous proceedings as well.

Judge HASTINGS. "To stay away from Kevin Gordon, he's hot, he's using your name." That's the first of five versions of what Mayor Clark has alleged that I said.

Mr. BRYANT. That happens to be exactly what you just read in the progress report of September the 5th——

Judge HASTINGS. So what?

Mr. BRYANT [continuing]. The day before you met him; isn't that correct?

Judge **Hastings**. So what?

Mr. **Bryant**. Judge, as I understand it, the theory of your defense to this wiretapping or Title III violation count is that all of this is a conspiracy between Mayor Clark and the FBI. Is that a correct statement?

Judge **Hastings**. My defense is I did not tell Mayor Clark anything, period.

Mr. **Bryant**. Well, you have, I assume, developed some additional defense as well, inasmuch as I notice your list of witnesses includes the FBI agents—the ones that will follow you in this proceeding includes the FBI agents and other parties who were alluded to by your counsel. We all took that allusion to mean that he was suggesting that somehow they were involved in either getting Mayor Clark to frame you or somehow they were involved in being the source of Mayor Clark's information instead of you. Is that a fair characterization of your defense?

Mr. **Anderson**. Mr. Chairman, I will object. The evidence will show what the evidence shows. Judge Hastings stands accused of having made a specific disclosure on a date. It impinges upon my role as well as his own to discuss what the theory of the legal defense is through this witness.

The **Chairman**. We have the unusual circumstance where the judge is also acting as his own attorney. I do think I'll sustain the objection to a question which calls on him to testify in his role as an attorney. I think it would be improper to put Mr. Anderson or anybody on the stand and ask them what the theory of their defense was. I think we'll sustain that objection. Obviously, if you wish to ask him about any factual matter or opinion that the judge has, I think that is appropriate.

Mr. **Bryant**. Well, Judge, exactly what is your opinion with regard to Mayor Clark and the FBI in this matter? Or let me back you up a notch. Why do you think Mayor Clark is coming here to testify against you and has testified repeatedly and consistently in the same fashion against you?

Judge **Hastings**. Representative Bryant, for the last eight years, I've been asked to impute the motives of others. Let me make it very clear to you and to everybody. I don't know why other people do things, and I don't have any reason to try to suggest why they do things. I simply know what I did not do. And I have told you and I will tell you forever that I didn't tell Steve Clark anything. And that is my defense. As to what else may have happened, I would think that the evidence will show what, if anything, happened.

Mr. **Bryant**. Well, do you know if the evidence shows that something happened?

Judge **Hastings**. I know that the evidence shows—and I don't want to be cute with you—that some people did some things that bear suspicion. But that doesn't, in the final analysis, bear on whether or not I told Mayor Clark anything. I'm telling you that as a victim I resent having to try to prove what somebody else has victimized me about. And for adverse inferences to be drawn about that is very disturbing to me, not only in this proceeding but in my life.

Mr. **Bryant**. Well, Judge, I assume that you would acknowledge that if there was an FBI source or FBI collusion that Mayor Clark would have to be a part of this enterprise, would he not?

Judge **Hastings**. Yes. Bût you again are asking me to fancy up something about what somebody else did. I've told you what I didn't do. It's to be believed or not to be believed.

But if you wish to go into that, you know, coincidences, I keep having people say that no coincidences can happen with me. I find it passing strange that H. Paul Rico and Steve Clark are golf partners. I find it more than passing strange that Anthony Amoroso and Stephen Clark are golf partners. Anthony Amoroso happened to have been the original supervising agent over William Murphy in my original case.

Now, whether or not there was any conspiracy on their behalf, I don't have to level any accusation. I know what I did not do, and I will stand on that.

Mr. **Bryant**. Well, now, you're getting into exactly the area that I wanted to ask you about. If these guys are golf partners and if the implication is that somehow there is a conspiracy, the question for the panel would be: Why would Stephen Clark be involved in a conspiracy?

Ms. **Williams**. I'm going to object——

Mr. **Bryant**. I'll ask you a question.

Ms. **Williams**. Excuse me. Mr. Chair, I'd like to object.

The **Chairman**. Is there an objection?

Ms. **Williams**. This question has been asked now four times. It's been answered four times. And I object to the continued persistent line of the same questioning. The judge has already answered it.

Mr. **Bryant**. Mr. Chairman, my intention was to follow that rhetorical question up with a question. That was not a question that the witness——

The **Chairman**. The objection will be overruled, and counsel will be able to state his question.

Mr. **Bryant**. The question is: Do you have any reason that you know of why Mayor Clark would have any type of a grudge against you or any vendetta or any purpose in trying to seek some bad result for you?

Judge **Hastings**. I don't have any reason to know of anything along the lines that you suggest. But I do know this: Steve Clark has a whole lot of problems.

Mr. **Bryant**. Well, tell the committee what they are. If they're relevant here——

Judge **Hastings**. Well, I think they've been borne out here.

Mr. **Bryant**. I haven't heard them as a person who sits in this hearing——

Judge **Hastings**. I don't want to quarrel with you, Mr. Bryant. I've given you my answer.

Mr. **Bryant**. Well, if you're going to——

Ms. **Williams**. I object to the argumentative nature of this questioning.

The **Chairman**. The objection is sustained. I believe the judge has answered the question. If there's another question, of course, you can ask that.

Mr. **Bryant**. What problems does Mayor Clark have?

Judge Hastings. I'm going to go back, Representative Bryant, and tell you what I did not do. I didn't tell Steve Clark anything, and I didn't come in here to lay accusatory fingers on any individual on earth with reference to what I did or did not do.

Now, how he comes to say something about me, I would think that you ought to know that better than me.

Mr. Bryant. I'm offering you the opportunity to tell the committee, in a setting which is a little bit less strict and formal than a normal courtroom, why that would happen.

Judge Hastings. I have no vendetta with him. I have no reason to know he has any vendetta with me. But people have been used before to get at others.

Mr. Bryant. All right. You have no personal relationship with Mayor Clark; is that correct?

Judge Hastings. None whatsoever.

Mr. Bryant. All right. And you have no professional relationship with him; is that correct?

Judge Hastings. No, sir, I do not.

Mr. Bryant. You're not political enemies?

Judge Hastings. Not that I know of, but we're not political allies, either.

Mr. Bryant. Well, are you asking the committee to believe that Mayor Clark has framed you?

Judge Hastings. No, I'm not asking the committee to believe anything other than that I did not tell Mayor Clark anything at any time about anything anywhere on earth.

Mr. Bryant. Would you agree, Judge Hastings, that in order to have attempted to frame you Mayor Clark would have had to time his confrontation with Waxy Gordon so that it exactly coincided with the day on which he had seen you?

Judge Hastings. I offer no accusation with reference to a frame. That's your terminology, and it's beginning to be more intriguing to me as you continue to utilize it.

Mr. Bryant. Well, let me make it more interesting. Once Mayor Clark had gotten this information, as I'm sure you would contend from some other source, not from you, he would have had to sit on the information, wouldn't he, until he had the opportunity to see you so that he could somehow interject you into the chain of events and reflect badly—in fact, reflect guilt upon you; isn't that correct?

Judge Hastings. Yes, sir, but that's not any defense that I'm offering. It's easy enough to achieve all of what you're suggesting. I merely know that I didn't tell the man anything, and that's all that I can say with reference to what I did.

Mr. Bryant. Judge Hastings, in the event that we accept as your representation the fact that there was either an intentional effort to frame you or that somehow or another——

Judge Hastings. No, now, I'm going to stop you. I haven't said that there was any intention or effort to frame me. You continue to persist——

Mr. Bryant. I agree.

Judge Hastings [continuing]. In that line of inquiry.

Mr. Bryant. I agree you have not said that. But I think I'm using my logical powers——

Judge Hastings. I apologize, Representative Bryant.

Mr. **Bryant** [continuing]. My logical facilities to observe that your answer has to imply either there was a frame-up or somehow or another Mayor Clark got this information from someone else who didn't have your best interests at heart. Wouldn't you agree? I mean, there's no other logical explanation for the fact that you're going to call the next group of witnesses, is there?

Judge **Hastings**. No logic on your side is not my job.

Mr. **Bryant**. Well, I'm just asking you, would you agree?

Judge **Hastings**. No, I don't have to agree with that. I think that's a logical assumption if one wished to conclude that. I'm trying to tell you what I did. I think that the swirling aspects of what goes on in a volatile community like south Florida has been adequately demonstrated here, and there may be more evidence that will demonstrate that there are any number of reasons that persons may know things other than as they achieve them from a Federal judge.

Representative Bryant, I consider myself to be a very responsible individual, and in addition to my responsibilities with reference to confidentiality of all matters that come before me, I consider myself to be a responsible person. I operated a law office for 13 years of my life, and one of the things that I take great pride in is in allowing the confidences that were expressed in me by those who were my clients, that I didn't violate them. And I defy you and anybody to go and find one time that I violated a person's confidence when they asked me, or if it was a requirement of the law or ethics, to not violate confidentiality. I take great stock in the fact that I can keep a secret.

Mr. **Bryant**. Well, Judge Hastings, if you suggest here today that the source of Stephen Clark's information was someone other than you, aren't you asking this committee to believe that it was a coincidence that Stephen Clark had never gone to Waxy Gordon to confront him earlier than the very day in which he saw you at the MMAP meeting on September 6th?

Judge **Hastings**. First off, I don't draw the inference that you draw from all of the testimony, especially that that I have given. The committee has heard the facts, and I believe that the astuteness of this committee allows that they will be able to determine what the facts are. And I don't have to draw inferences.

Let me say to you also that fortunately for me I have been able to rise above my prejudices with reference to persons who I believe from time to time have done things that are untoward toward me, and that includes personnel that I've heard testify here. And as it pertains to that, I've taken an oath to uphold the law, and I intend to continue to do that. Therefore, there is no need for me to come in these proceedings knowing that I didn't tell Steve Clark anything and lay any accusatory blame on anybody.

If the evidence develops that, that, too, will be for the committee to ferret.

Mr. **Bryant**. Well, Judge, I'm giving you an opportunity here, I think, to answer——

Judge **Hastings**. That's exactly what the Public Integrity Section said, they were giving me an opportunity. You're not giving me any opportunity.

The Chairman. Representative Bryant, if there's another question you wish to put, we're glad to hear that. I do think there comes a point where repetition of the same question is excessive.

Mr. Bryant. Mr. Chairman, I don't have very far to go here. I think it would be a great waste of an opportunity not to put to the respondent what logic dictates has to be the alternatives to the idea that he did not tell——

The Chairman. But if there is a new question that has not yet been asked and answered, we'd be pleased to hear it.

Mr. Bryant. Well, Judge Hastings, I would ask this question: If, indeed, the alternative theory of what happened here has to be that you didn't tell Mayor Clark this information, but instead somebody else did, wouldn't it require that you make the committee believe that it was a coincidence that within minutes of seeing you, that Mayor Clark went out and demanded a meeting with Waxy Gordon to find out what was going on?

Ms. Williams. Mr. Chairman, I wish to object. The burden of proof here is not the respondent's but is the House managers', and he's now trying to force the judge into having a burden of proving something, and I object to that.

Mr. Bryant. Your Honor, it is——

The Chairman. We'll override the objection at this point. The judge can respond once more.

Judge Hastings. Well, I think your inferences are logical inferences, but all I'm saying is I don't draw from your inferences the strength of my defense. My defense is that I didn't tell the man anything. Any inference you can place on it any other way. I think it's logical to conclude what you have stated, and I don't find any illogic in my saying that I did not tell him anything, particularly in light of the fact that I know that that's the truth.

Mr. Bryant. It would also be coincidental, would it not, that the same information which you were reading on September 5th is exactly what Mayor Clark said to Waxy Gordon on September 6th, would it not?

Judge Hastings. No, I don't know that that's the exact same thing, Representative Bryant, and you're being unfair to the committee. I'm not certain that they have every one of the statements that Waxy said or that somebody else said, what Steve Clark is alleged to have said. And I'm not so certain that it has been all that firm consistently as you suggest. Drawing from what you say, if that is the exact language, then yes, that's a logical inference that one should draw.

Mr. Bryant. Well, I read it from the progress report of September the 5th, would you agree?

Judge Hastings. I don't have any problems with that at all.

Mr. Bryant. All right. Let's move on to March 1986. It was at that time when you read something about an investigation of a leak.

Judge Hastings. September 6th now.

Mr. Bryant. September 6th was the alleged date of the leak.

Judge Hastings. Yes, sir.

Mr. Bryant. OK. But I'm asking you to move on to March 1986.

Judge Hastings. Well, you didn't say March, and I'm not trying to quibble with you. I just want to know where we are. March?

Mr. **Bryant**. I'm sorry if I wasn't clear.

Judge **Hastings**. Yes, sir.

Mr. **Bryant**. I said let's move on now to March 1986.

Judge **Hastings**. All right, sir.

Mr. **Bryant**. And that was the time, I believe, when you read something in the newspaper about an investigation of the leak concerning the wiretap which you had supervised. It was in the Miami Herald; is that correct?

Judge **Hastings**. Yes. I didn't only read it in the Miami Herald. At least two reporters had been to my office querying about same, and I'll tell you this: I was absolutely livid the way the information was coming to me. It was rife in the courthouse and bouncing all over the place. It was not just the Miami Herald that was aware. It was other reporters as well. So it was not what I read in the paper per se. It was what I learned about what ultimately was put in the paper that made me angry, and I went to Judge King about it at that moment. And that's the very first time that I knew anything about any disclosure at all.

Mr. **Bryant**. Would you tell the committee why you were angry?

Judge **Hastings**. Yes. I was angry because I had been told that my name was associated with the disclosure of the confidential information, not what appeared in the newspaper. There were other reporters that were involved in this particular investigatory undertaking.

You see, what you have to put in sequence is that the grand jury was running at that time, and information had been leaked violative of Rule 6(e), allowing the press to be involved to the degree that they were. And when I learned it, I knew then that my name was associated. The Herald was just cute in how they wrote their article.

And to answer Ms. Vickers' statement to you, it was later that my name was blatantly blasted in the Herald and other sources as saying that I had leaked something to Mayor Clark.

Mr. **Bryant**. Well, Judge, you said you were so angry and you were livid.

Judge **Hastings**. Yes.

Mr. **Bryant**. The fact of the matter is you didn't take a single step to move forward an investigation that would clear your name, did you?

Judge **Hastings**. I went to the chief judge of my court.

Mr. **Bryant**. Yes, but there's nothing——

Judge **Hastings**. If you don't call that a single step, then we ain't walking in the same path.

Mr. **Bryant**. Well, I don't think we are walking in the same path——

Judge **Hastings**. Well——

Mr. **Bryant** [continuing]. Because Judge King doesn't have any authority to investigate it, does he?

Judge **Hastings**. Oh, I'm not so sure that Judge King doesn't have some administrative responsibilities with reference to certain undertakings. And, you know, I don't have to work for the FBI.

Mr. **Bryant**. You didn't go——

Judge **Hastings**. I work for the United States District Court.

Mr. BRYANT. Well, you didn't call the FBI to try to find out what happened here, did you?

Judge HASTINGS. Now we're going to go into what I didn't do, and, no, sir, I did not.

Mr. BRYANT. Did you ask Judge King to investigate this matter——

Judge HASTINGS. No.

Mr. BRYANT [continuing]. Or for him to call the FBI?

Judge HASTINGS. No. I——

Mr. BRYANT. Well, what did you ask Judge King to do?

Judge HASTINGS. I explained to him how I felt, and he gave me his assurance that he would look into the matter, and he tried to comfort me because I was in a rage. I was then, and it's hard for me to contain my rage as I speak with you.

Mr. BRYANT. Judge, that's exactly what I'm getting at.

Judge HASTINGS. Yes.

Mr. BRYANT. You did not take a step to advance an investigation to find out who had leaked this, how the leak took place or to clear your name, did you?

Judge HASTINGS. The people that I would had to have speak to—or spoken to were people in large measure that you may have some notion that you run up in their faces. I don't do it that way.

Mr. BRYANT. Well, Judge, you didn't call the FBI, did you?

Judge HASTINGS. No, sir, I did not.

Mr. BRYANT. You didn't call the United States Attorney, did you?

Judge HASTINGS. No, I did not.

Mr. BRYANT. And you didn't call the assistant U.S. Attorney Bob Martinez with whom, you testified, you had a very close relationship and had worked very well, did you?

Judge HASTINGS. Absolutely not.

Mr. BRYANT. Indeed, when the authorities called you and asked you for your help with the investigation, you refused to help them, didn't you?

Judge HASTINGS. Yes, and there's an exacting reason why.

Mr. BRYANT. This is not a courtroom, so I'll be happy to let you tell why.

Judge HASTINGS. Right. For the precise reason that the matter was in full bloom and no one had come to me and a whole lot of investigation had not been done, as I look in retrospect. But as I look at that particular matter, I can assure you that I had no business breaching those same confidential aspects that I was accused of breaching even to those particular persons that called me. And I expressed myself that way. I expressed it first to the Herald. I expressed myself that way to Mr. Mazzella. And in the morning, if the Public Integrity Section calls me, I'm not going to speak to them.

Mr. BRYANT. But, Judge, you spoke with Chris Mazzella, the supervising case agent.

Judge HASTINGS. I didn't know that. I heard him say that yesterday, and I don't know that his name is on any of the papers. And I would have to see it. And I don't know that in the statement that I had the court reporter take that he called himself the supervising agent. Doubtless he may have. If he did, then I still feel that I had a responsibility with reference to the confidentiality of the Title III wiretap not to go into particular matters.

It's interesting to me how you do this. It's all right for him to lie to me, but it's wrong for me to don't talk to him.

Mr. BRYANT. Judge——

Judge HASTINGS. I may have had good reason not to, Representative Bryant.

Mr. BRYANT. Chris Mazzella was the supervising case agent and, as such——

Judge HASTINGS. You're saying I knew that, and I may have. And I'm not telling you that I didn't.

Mr. BRYANT. Well, that's convenient to say you may have. I mean, it's hard to believe that you didn't.

Judge HASTINGS. Well, show me that I did, Representative Bryant. You would have the documentation. I gather he must have said something to me or his name is on an affidavit or something along those lines. And I don't doubt that, you understand. But I didn't talk to him or anybody else with reference to this matter. They ultimately did what they thought that they needed to do, and I have a pretty keen sense of being investigated. Really do.

Mr. BRYANT. Well, I can understand why.

If you don't mind, I'd like to read to you from page 4 of the verbatim transcript prepared by your receptionist.

Judge HASTINGS. All right.

Mr. BRYANT. At your request——

Judge HASTINGS. I've not read it——

Mr. BRYANT [continuing]. When Chris Mazzella called your office.

Judge HASTINGS. Wonderful.

Mr. BRYANT. And then you returned his call.

Judge HASTINGS. That is correct.

Mr. BRYANT. I'll just read one line here. Mr. Mazzella: "Well, no, Geoff Santini. I don't know if you remember Geoff. He was the case agent. My function is I'm the supervisor." The court, that's you: "All right." OK?

Judge HASTINGS. What has changed?

Mr. BRYANT. The supervising case agent, Judge Hastings, knew more about the details of this case and those wiretaps than even you knew.

Judge HASTINGS. What responsibility did I have to him at that point in time, Representative?

Mr. BRYANT. I think it's very clear, since you asked me, that you had the responsibility to talk to him about something that you were very clearly legally able to talk to him about——

Judge HASTINGS. I see.

Mr. BRYANT [continuing]. That's the contents of the wiretap. And I am inquiring into why you wouldn't be the first one to call and say: Get over here, I want to get to the bottom of this allegation.

Judge HASTINGS. You want me to say that in that particular instance, the way that they had leaked that information, that it—what did he say earlier? Please hand me the statement.

Mr. Chairman, may I read the entire statement?

The CHAIRMAN. Certainly, you can read it——

Judge HASTINGS. Thank you.

The CHAIRMAN [continuing]. In its entirety; aloud, if you'd like.

Judge HASTINGS. Thank you, sir. This is a telephone call, May 19, 1986, and I ask for Agent Mazzella. The receptionist said, "One moment." Another receptionist said, "Mr. Mazzella's office." And then I said, "Yes, this is Alcee Hastings, and I'm responding to Mr. Mazzella's call." The second receptionist said, "Hold on."

Mr. Mazzella says, "Hello." I repeat, "Mr. Mazzella?" He says, "Yes?" I said, "This is Alcee Hastings. How are you?" "Hi, Judge," he says. "How are you doing?" "I'm doing real good," I respond. "Let me say to you, if you're calling me regarding something official, I wanted you to know that I do have my court reporter present, and you're welcome to record this conversation." Mr. Mazzella said, "Thank you anyway, I won't be doing that. The reason, I don't know how much—is it Betty Williams?" And I responded, "That's my secretary." And he said, "Yes, right. She—I mentioned to her earlier I had a request from the Public Integrity Section of the Department of Justice to give you a call and make a possible arrangement to sit down and talk to you about—I don't know if you recall reading several articles that appeared in the Miami Herald. I guess probably in, oh, gosh, I'm trying to recall the date. It seems to me it was like late March wherein there was some statement or mention of the Kevin Gordon matter wherein there's apparently been some mention in that, in that article about Gordon being apprised of, warned of the existence of a Title III involving him." And I said, "Uh-huh."

Mr. Mazzella said, "And apparently, if I recall, the article indicated that Mayor Clark was supposed to have warned him of the existence of the Title III." My response was, "Uh-huh." Mr. Mazzella said, "And I don't remember if you recall, but you were the supervising judge on that Title III involving the Gordon matter. And if I recall, there was some reference or mention to the fact that Gordon was made aware of this thing by Clark, and that as a result the investigation was disclosed to Gordon about our case. Public Integrity, you know? We supplied that information."

And I said, "When you say 'our case,' were you the case agent on any wiretap before me?" And he said, "Well, no. Geoff Santini. I don't know if you remember Geoff. He was the case agent. My function is I'm the supervisor." And I said, "All right." And he says, "Of Geoff's." And I said, "All right." And he said, "And that's how I got involved in this thing." And I said, "Hmm." And so basically Mr. Mazzella says, "I referred all this information to the Public Integrity Section, you know, as we would normally do in the course of any business, inquiry of that nature. And their request of me was to contact you and see if you could spend some time, if you have some time available, sit down with us and go over any knowledge you might have of this matter."

I said, "OK." I said, "Let me say this to you. Certainly, I think you know and I know that the Public Integrity Section knows that it would be inappropriate for me to give you any information regarding any wiretap that I might have supervised or not have supervised. I think you know that and would agree, wouldn't you?" His answer: "Uh-huh." I said, "In that sense, then, it is absolutely without my understanding as to how officially I could relate to you or to the Public Integrity Section or anyone else anything having to do with any Title III that I may or may not have been involved in at any given time. So I would that you would relate that to them, and if they are desirous of speaking to or with me, then I suggest that they may wish to do so under an appropriate aegis. Are you investigating me?" His answer was, "No, oh, no." And I said, "Well?" And he said, "We're investigating the—well, we're trying to get to the bottom of whether there was any disclosure. If there was, how did it happen?" I said, "I follow you. But, you see, it is sort of really a Catch-22. And I've had some experience along these lines, and I do know that if I was to be revelatory to you or the Public Integrity Section, that I would be violating the law. It's the exchange situation"—and there was a phonetic, and I don't believe that's what I said, but that's what's on the paper—"but I think all of us would have to be authorized by the appropriate authorities in order for me to discuss something official like that. And in that sense, no, I don't, I don't have any opportunity so that I can talk with you. I'm available to discuss with them anything as they are operating with then the appropriate aegis."

Mazzella says, "OK." I said, "All right." "How about if I do this?" he says. "Can I have the attorney up in DC give you a call?" I said, "I have no objection to that at all." And he said, "Maybe y'all can work out how to." I said, "That sounds good." And he says, "All right. Let me give you his name just in case." And I said, "All right." "And that way you have a record of it," he says. I says, "All right." "His name is Eric Holder, H-o-l-d-e-r." "All right, sir." "And I'll have him give you a holler. And if you can figure out a way of doing it, that would be great." I said, "Thank you, Mr. Mazzella." He said, "Listen, I really appreciate your calling me back, Judge. Bye-bye." "Bye-bye."

And that's entirely different, Representative Bryant, than the context that you laid up your questions.

Mr. BRYANT. Well, I would vigorously dispute that, Judge. It was not different at all.

Judge HASTINGS. All right, well——

Mr. BRYANT. Did you not refuse to talk to Chris Mazzella?

Judge HASTINGS. Most assuredly, I did not talk with Chris Mazzella.

Mr. BRYANT. Were you informed that he was the supervisory case agent?

Judge HASTINGS. I was informed that he was something called supervisor, and I gave him my reasoning at that time.

Mr. BRYANT. And did you not conclude that conversation by saying, "Go ahead and tell him to call me. That'll be just fine"?

Judge HASTINGS. That's exactly what I said.

Mr. BRYANT. And when Eric Holder calls you from the Public Integrity Section of the Department of Justice, you said to him, "You'll have to make your case without me," and wouldn't talk to him; isn't that correct?

Judge HASTINGS. Exactly. That isn't all I told him. I told him I'd been around with you all before, and I'm prepared to go around with you all again.

Mr. BRYANT. Well, that's not the same thing you told Chris Mazzella, is it?

Judge HASTINGS. Excuse me. You're asking me what I said to Mr. Holder. I merely told you what I said to Mr. Holder. What I said to

Chris Mazzella was that it was all right for him to have the DC attorney give me a holler.

Mr. BRYANT. Judge, was there no investigative agency you could call anywhere in our entire justice system to help clear your name? Could you have not taken a single affirmative step to get to the bottom of what you testified made you livid with anger?

Judge HASTINGS. We did.

Mr. BRYANT. We did?

Judge HASTINGS. Yeah.

Mr. BRYANT. I don't know what that means.

Judge HASTINGS. We're here.

Mr. BRYANT. You're here four years later.

One last question. You wouldn't talk to Chris Mazzella. You wouldn't talk to Eric Holder. But the fact is, Judge, you talked to a reporter named Brian Duffy with the Miami Herald, didn't you?

Judge HASTINGS. Not about a Title III wiretap.

Mr. BRYANT. You told him, did you not, that you didn't think you knew Stephen Clark, didn't you?

Judge HASTINGS. If he asked me that question—and I don't remember my conversation with Brian Duffy——

Mr. BRYANT. In fact, Judge, you called him back the next day to clarify that you might have met Mayor Clark some place but you weren't sure; isn't that correct?

Judge HASTINGS. I have no independent recollection of it. I do not deny that I may have done that.

Mr. BRYANT. No further questions.

Judge HASTINGS. All right.

The CHAIRMAN. Is there redirect examination?

REDIRECT EXAMINATION

Ms. WILLIAMS. Yes, there is.

Now, Judge Hastings, it was you who brought forward Monsignor Walsh; is that correct?

Judge HASTINGS. That's correct.

Ms. WILLIAMS. And it was you who brought forth Joy Royals Vickers and her testimony regarding what happened on that day; is that correct?

Judge HASTINGS. That is correct.

Ms. WILLIAMS. And it was you who produced the photographs to the Investigating Committee in Atlanta and at the House and here today; is that correct?

Judge HASTINGS. That is correct.

Ms. WILLIAMS. Now, let me ask you, Judge, why was it that you had your court reporter transcribe that telephone conversation?

Judge HASTINGS. Because at that particular point in time, as I indicated to you, the information was all over the courthouse and everybody was laying up an accusatory posture. And I wanted to make sure for a change that we had an accurate record of any conversation that I may have had with anybody in authority as best I could.

Ms. WILLIAMS. Judge, if you had, in fact, discussed the contents of the wiretap, et cetera, with Agent Mazzella over the telephone, do you envision that you would be facing other charges here today?

Judge HASTINGS. That's in essence what I said to him. If that is not clear, then I just guess I did not make it clear to him. But I thought I did by suggesting to him—and we heard it as late as yesterday. Judge King would even refuse before this commission to say things with regard to this exact same wiretap that he perceives to be confidential.

Ms. WILLIAMS. Now, Judge, I believe you testified earlier that there were some several versions, not just one, of what Steve Clark says that you said to him.

Judge HASTINGS. Either that he said or others said that he said. And, Ms. Williams, I don't have an independent recollection of them all, but in reviewing this stuff, there are at least five versions——

Ms. WILLIAMS. Well, let me ask you——

Judge HASTINGS [continuing]. Of what he's supposed to have said.

Ms. WILLIAMS. Now, do you recall that there was testimony regarding the 302 of Kevin Gordon taken by the FBI?

Judge HASTINGS. Yes.

Ms. WILLIAMS. Wherein it was alleged that what Kevin Gordon said Steve Clark said was that "Kevin Gordon is hot, he's using your name in regards to Hialeah." Do you recall that?

Judge HASTINGS. I recall that.

Ms. WILLIAMS. That was one version; is that correct?

Judge HASTINGS. That's one version.

Ms. WILLIAMS. From the 302.

Do you recall that there was a tape made between Kevin Gordon and Steve Clark wherein Steve Clark said that you said that he——

Mr. BRYANT. Mr. Chairman, we'd like to ask, since this is redirect examination, that it not be leading questions. That's clearly a leading question.

The CHAIRMAN. I believe the objection is well taken. If counsel would ask the witness what he recalls about particular statements or incidents, I think that would be better than recounting to him precisely what the evidence is that counsel would like to have testified to.

Ms. WILLIAMS. Mr. Chairman, in order to do that, I think we'll just have to pull the various exhibits with the various versions of what Steve Clark said. And, therefore, I would ask for the clerk to provide me with the tape of the conversation between Gordon and Steve Clark, and I don't know what number that is.

Could you excuse me one moment?

The CHAIRMAN. Certainly.

[Pause.]

Ms. WILLIAMS. Rather than prolong this, I would simply direct the committee's attention to Exhibit 194B, which is a transcript of the tape recording between Gordon and Steve Clark, dated January 17, 1986 and Exhibit 187, which is a transcript of the tape between Bonehill and Gordon wherein another version of what Steve Clark said is related, and to the fourth progress report wherein there are three different versions of what was said in the various footnotes of that progress report.

Mr. MCGANNON. What was the last one? I'm sorry.

Ms. WILLIAMS. The fourth progress report, Respondent's Exhibit 181.

And I have nothing further, Judge. Thank you.

The CHAIRMAN. Thank you very much.

Is there recross-examination?

Mr. BRYANT. There is not.

EXAMINATION BY THE COMMITTEE

The CHAIRMAN. Judge, let me just ask, you were sworn in as a Federal district judge in 1979; is that correct?

Judge HASTINGS. That is correct, Mr. Chairman.

The CHAIRMAN. How frequently from the time you were sworn in until the time of this alleged incident, how frequently did you have the occasion to preside over Title III wiretaps?

Judge HASTINGS. I believe there were three occasions previous to this one. Or the sum total of three.

The CHAIRMAN. Sum total of three.

Judge HASTINGS. Yes, sir. We have a rotating system where the duty judge handles Title III wiretaps and other confidential matters, pen registers, a variety of duty responsibilities. And it rotates in the Miami Division through the number of judges. Therefore, some years can pass before you get to be duty judge again. And some of us don't like duty work and we complain about it, but we have to do it.

The CHAIRMAN. Can you recall when the first occasion was that you were assigned the responsibility of presiding over a Title III wiretap?

Judge HASTINGS. Mr. Chairman, I don't have an independent recollection, but I can get that direct information for you. My deputy clerk is en route here, but I believe we can call back to the clerk's office and supply it to you.

It would be my guess, when I went on the bench and began my duties—you don't get to be the duty judge right away because you've not had a lot of responsibilities. So I would think that Judge Davis and myself would, in the rotation, have been put at the very end of the rotation, as are all new judges when they come in so they get a feel for the court. So it would have been a good six or seven months before my turn would have come to be duty judge and have a Title III.

The CHAIRMAN. What occasion did you have in the time that you've been Federal district judge to be privy to the testimony being presented at the grand jury there in the Federal court?

Judge HASTINGS. Presiding over grand juries?

The CHAIRMAN. Yes.

Judge HASTINGS. Oh, I would think Key West, Fort Lauderdale, Miami at least three times, and pinch-hitting for other judges when matters come up from the grand jury some other times. I would think a total of maybe six, Mr. Chairman, and I'm one of the judges that took a new tack and swore in two grand juries at the same time. We have a plethora of grand juries in progress in Miami all of the time. So I'm remembering six. There would not have been less; there may have been more.

The CHAIRMAN. That's all I have at this point.

Senator Specter?

The VICE CHAIRMAN. Yes, thank you, Mr. Chairman.

Judge Hastings, as I understand your testimony, you declined to talk to Special Agent Mazzella——

Judge HASTINGS. Yes, sir.

The VICE CHAIRMAN [continuing]. Mr. Holder because you did not want to disclose to them confidential Title III wiretap information.

Judge HASTINGS. That is the precise reason. There is a more subtle one, Senator Specter.

The VICE CHAIRMAN. Well, we'll come to the subtle one in a moment because I think I understand what it is. Had Assistant United States Attorney Martinez or Special Agent Santini come to talk to you, there would have been no occasion to decline to talk to them on grounds of secrecy because they knew what the wiretap information was?

Judge HASTINGS. Precisely. And they did not come to me, Senator.

The VICE CHAIRMAN. So, you had no assurance that Special Agent Mazzella really knew about the Title III wiretap information which was secret?

Judge HASTINGS. I had no such assurance, Senator.

The VICE CHAIRMAN. The one that Mr. Holder did.

Judge HASTINGS. I certainly didn't know that Mr. Holder did.

The VICE CHAIRMAN. And let's get to the subtle reason. Was it because the Public Integrity Section had conducted the first prosecution——

Judge HASTINGS. Yes, sir.

The VICE CHAIRMAN [continuing]. You chose not to talk to them?

Judge HASTINGS. That is precisely why, Senator. And if you note from my statement to Special Agent Mazzella, I said "under the appropriate aegis." I thought that there were special circumstances that could have been arranged and I would have been happy to talk to them but, again, I don't wish to lay an accusatory finger on people, but I think that I was abused by the Public Integrity Section and I have difficulty in functioning with how they conduct their business.

The VICE CHAIRMAN. Well, didn't Special Agent Mazzella say that the—he said that the Public Integrity Section was going to call you.

Judge HASTINGS. Yes, and I knew when he said that that I wasn't going to talk to them.

The VICE CHAIRMAN. Well, why did you pursue that line with him? Why didn't you simply say to him that, if the appropriate aegis was followed, that is, not the Public Integrity Section, I will answer questions?

Judge HASTINGS. Yes, sir. The only thing I can say to you, Senator, is what I said to him, and when he said he would have them give me a holler, that was fine with me.

The VICE CHAIRMAN. But you knew at that time you wouldn't talk to them?

Judge HASTINGS. I had every reason to believe that I would not talk to them.

The VICE CHAIRMAN. But you did not say to anybody whom you would talk——

Judge HASTINGS. No, sir.

The VICE CHAIRMAN [continuing]. Or what the appropriate aegis would be?

Judge HASTINGS. No, sir, I did not.

The VICE CHAIRMAN. Why not?

Judge HASTINGS. Well, first off, no one asked. I felt that I was being investigated, based on how the rumor was running at that point in time, and I wanted to do everything to protect my interests.

The VICE CHAIRMAN. If Special Agent Mazzella had answered your question when you said am I under investigation, had he said to you, yes, would that have made a difference in your response?

Judge HASTINGS. It would have made a big difference, because at that point in time I would have asked him to arrange for us to meet with Chief Judge King and/or the Attorney General of the United States, so as to how we could go forward appropriately, as I perceived it, be that right or wrong.

The VICE CHAIRMAN. Did you suspect at that time that you were under investigation——

Judge HASTINGS. Yes, sir.

The VICE CHAIRMAN [continuing]. Notwithstanding Special Agent Mazzella's comment?

Judge HASTINGS. Yes, sir, I felt that that was where he was coming from.

The VICE CHAIRMAN. Well, the ultimate question, Judge Hastings, is this: You and I both know that you don't have to answer anybody's questions at any time unless you are under subpoena——

Judge HASTINGS. Yes, sir.

The VICE CHAIRMAN [continuing]. Only in terms of a possible contempt citation. But in a context where you thought, as you said, that you were under investigation or suspected you were, and although these individuals, Special Agent Mazzella and Mr. Holder, weren't very sophisticated in really following the right procedures, and you knew what the right procedures were, because of your more extensive knowledge in the field and also how you personally would respond when you had the ultimate decision, why didn't you proceed to try to arrange some method where it would be comport with appropriate practice, with your own sense of dignity and fair play and get the matter taken care of?

Judge HASTINGS. I thought the train was on the track at that time, Senator, and I perhaps, looking in retrospect, acted quickly with them, but I didn't like what was happening and I don't like it now, and so I chose the tact of going in my shell to protect myself and I may have what I perceive as healthy paranoia and that may be problematical, but I can assure you that that is how I was operating at that time.

The VICE CHAIRMAN. So, you just decided that you were not going to pursue the matter in any way, that you had——

Judge HASTINGS. There was no question in my mind but that they were going to pursue it in every way that they could at that point in time.

The **Vice Chairman**. But had they told you you were under investigation, you would have done it differently and gone to the Chief Judge and tried to have worked it out?

Judge **Hastings**. Indeed, no question.

The **Vice Chairman**. Well, why do it under that circumstance and not take the initiative to get it done, since substantively it would be the same thing one way or another, just how you get there, depending on——

Judge **Hastings**. Senator, looking back, I guess I would have done a lot of things a different way, and I don't mean to be offensive at all. But I was kind of acting on my own at that point and I felt that these individuals were about the business of a full-blown investigation. I mean, it was bouncing off the walls of the courthouse.

The **Vice Chairman**. Do you think the consequence would be the same, whether or not you cooperated?

Judge **Hastings**. No, I thought the consequences would be worse if I sat down and talked with them, because of the way that they functioned.

The **Vice Chairman**. Why? You are a very persuasive man, you would have——

Judge **Hastings**. I hope I am.

The **Vice Chairman**. Well, you have a way of putting things, you have spoken very forcefully about this incident——

Judge **Hastings**. Yes, sir.

The **Vice Chairman**. Why not try that? Why wouldn't that be a better alternative than simply stonewalling?

Judge **Hastings**. Doubtless, it would have been a better alternative, as I look in retrospect, Senator Specter.

The **Vice Chairman**. OK. Thank you very much, Judge Hastings.

Judge **Hastings**. Yes, sir.

The **Chairman**. Senator Leahy?

Senator **Leahy**. Thank you, Mr. Chairman. It has been claimed in the testimony that Mayor Clark said that you were monitoring a wiretap or at least that you knew something that would have come from the monitoring of a wiretap. Assuming the statements attributed to him are so, how would he know that you were monitoring a wiretap?

Judge **Hastings**. Senator Leahy, I really don't know. I have my suspicions and I was not trying to be in a foot-dance with Representative Bryant. I still don't think my speculative notions about how this thing may have gone forward is going to be beneficial, because I can give you a scenario, as a matter of fact several, as to how he may have come to know, but I don't know that I can prove any of that and I am very hesitant, when I can't demonstrably prove something, to say that something is so.

Senator **Leahy**. Let me ask you some specific questions, without going into your suspicions. Could there have been a leak from your courtroom, is that possible?

Judge **Hastings**. I doubt that very seriously, but I don't think, when I put the question the other day to Attorney Martinas, I don't think he answered all of the particulars and he took offense to the fact that I said that no one, for example, was asked anything in his office.

You know, the word "seal," it carries with it an enormous-sounding impact, but if you heard him, he said that someone made a copy and then that copy was sealed and then something was put in a yellow envelope—well, then it leaves my office and it goes to someone else's office. It had to be typed in his office, and we have evidence and we brought it—it may not even be germane to this case, Senator Leahy—but we have evidence that there are individuals or at least certainly one during this same time period who was on the payroll of an individual who is alleged to be "the great corruptor" in south Florida——

Senator LEAHY. Who is that?

Judge HASTINGS. Alberto San Pedro.

Senator LEAHY. Who was on the payroll?

Judge HASTINGS. This gentleman, Henry Kobetitsch was a Southern Bell employee that had broken into the computer regarding Title III wiretaps. All I am saying to you is there are other ways that people in a community as volatile as ours get information, but out of my office, as to Marilyn Carter or Betty Williams or, at that time, whoever my law clerks were, I believe Shoshanna Ehrlich was with me, as to any of those people, I don't believe a single one of them told anybody anything.

Senator LEAHY. Did each one of them have access to the monitoring of the wiretap?

Judge HASTINGS. No, only Marilyn directly. Anybody might make a copy with reference to the process reports, and I believe more persons than one. My office functions sort of as a unit, and you might find me making copies as well.

Senator LEAHY. Why would Mayor Clark lie, and particularly lie to finger you? Why would he do that?

Judge HASTINGS. The only thing I can tell you, Senator Leahy, is doubtless, he must have known some kind of way or another that I was monitoring that particular wiretap. If the heat was on him, it seems to me a logical thing to try to do, to cast the heat aside. I don't know all of the particulars.

Let me give you another scenario: Mayor Clark may have been very close to being indicted himself and authorities——

Senator LEAHY. Has he ever been indicted?

Judge HASTINGS. Not to my knowledge—but authorities very occasionally will go to an individual and use that individual to try to achieve an end that they couldn't achieve.

Senator LEAHY. Was everything stated publicly anywhere that Mayor Clark was close to, came close to or might have been indicted?

Judge HASTINGS. He should have been indicted in this particular investigation. [Laughter.]

Senator LEAHY. I think you are talking about something that would have predated his statement about the leak.

Judge HASTINGS. I understand.

Senator LEAHY. I think you understand my question. Has he ever been, was it ever stated anywhere publicly prior to that time that he was in jeopardy of being indicted?

Judge HASTINGS. Senator Leahy, I hear rumors about people all the time and I don't think it serves me any useful purpose to talk about rumors. I don't know of any example officially.

Senator LEAHY. Let me ask you a direct question. We have heard testimony about Mr. Borders and we are trying to get him to testify. Did Mr. Borders ever offer you money, directly or indirectly, in relation to any of your rulings?

Judge HASTINGS. None whatsoever.

Senator LEAHY. I'm sorry, because I was at the drought hearing earlier, I did not realize——

Judge HASTINGS. I would like to get it all over with, Senator.

Senator LEAHY. I did not realize you were coming in again, and I apologize.

Judge HASTINGS. That's all right.

Senator LEAHY. Then, I take it that would be the time to ask questions about BWI and all.

Let me ask one last question, and in some ways it goes into the other issue, too, but I think it might be appropriate here. Did you at any time, since you have been a Federal judge, discover that there was anyone in your office who was disclosing matters of a confidential nature, either regarding your rulings—not necessarily wiretaps, but anticipatory rulings or anything else? Have you ever, in your career as a Federal judge, discovered anybody doing that?

Judge HASTINGS. No, sir, and if I had, that person would have been fired.

Senator LEAHY. I understand.

Thank you, Mr. Chairman. Thank you, Judge.

The CHAIRMAN. Are there other questions? Senator Rudman?

Senator RUDMAN. Judge Hastings, I just want to go back to some testimony that you gave back before the Judicial Conference, where you had your hearing.

Judge HASTINGS. Yes, sir.

Senator RUDMAN. This ground has been gone over before here and you may have the same position, but I just want to tell you what you said then.

Judge HASTINGS. All right.

Senator RUDMAN. It is not inconsistent with what you said today, but I just want to tell you how you said it.

Judge HASTINGS. Yes, sir.

Senator RUDMAN. You had a fairly long discussion with Judge Hill on the whole question of why did this happen, how could it have happened, the same kind of thing that the Congressman asked you, the same kind of question that Senator Leahy has asked you. I don't have to read the whole thing, because it was a very friendly back and forth, it wasn't adversarial, and finally he said to you, "And you have some idea as to what they are, but you don't care to share them with us." What "they are" is referring to your theories as to what might have happened.

Judge HASTINGS. Yes, sir.

Senator RUDMAN. And you said, "I don't. I think—let me just be very blunt with you, Judge Hill, I have given you what I have to say regarding to what I was alleged to have said to Mayor Clark. I know that this investigation can go in any number of directions pursuant to the statute and, in an effort to protect myself, in the event the worst scenario develops statutorily for me here, I think it is in my best interest to wait for another forum to discuss some of my views."

Judge HASTINGS. Yes.

Senator RUDMAN. I dare say this may be the last forum, and I want to give you an opportunity, although somebody might object to counsel's question—there haven't been objections so far to the panel's questions——

Judge HASTINGS. Yes, sir.

Senator RUDMAN. My colleague says it's coming. [Laughter.]

I would just like to ask you if you can give us any reason, with some substance, as to how this happened, with all the coincidences which we all have on the record before us——

Judge HASTINGS. Yes, sir.

Senator RUDMAN [continuing]. If you have some specific evidence of some kind that would help this panel address this very difficult part of this entire proceeding.

Judge HASTINGS. Senator, I think that I am in the same position, and I recognize what I said there and I will try as best I can to be as specific about what I believe the evidence will further demonstrate this afternoon.

Special Agent Dowd of the FBI was married, meaning a marriage ceremony was performed under his notarial certificate by Mayor Clark. Special Agent Dowd received a telephone call sometime in advance of the authorization of the wiretap by me from Martinez and Agent Santini.

The substance of the request made by Glenn Whittle of Special Agent Dowd was is the mayor being investigated in Hialeah. There's more to it than that. It turns out that, just in sort of a passing reference before Congressperson Conyer's subcommittee, Professor Anderson asked Mayor Clark, did he know any FBI agents, and the lead supervisor in my original investigation in 1981 is Special Agent Anthony Amoroso. It turns out that there is a very strong bond and connection, and doubtless a natural one, between Anthony Amoroso and H. Paul Rico, who was the undercover agent in my original investigation.

It turns out further that Special Agent Dowd has a family member that works for H. Paul Rico. It turns out further that Anthony Amoroso has relatives who work for H. Paul Rico.

Now, somewhere in that swirl, in spite of the protestations of the FBI authorities—and I have no reason to disbelieve them, but somewhere the notion is that there may very well have been some furthering of information totally removed from any authorization that I had and/or disclosure of same.

Now, to follow up on that, it further seems to be reflected that Agent Dowd made a memorandum, as is his requirement, of the Whittle call, memorializing same. When Whittle is approached at some point in time, he denies that any of this occurred the way that it is memorialized in the FBI 302. When H. Paul Rico is approached, he denies having said anything at all to Whittle.

Now, somebody is lying and something is wrong. I can't prove it and I don't believe anybody is going to walk into this Senate committee and say that they had any vendetta against me, but those coincidences, as strange as doubtless many of the coincidences we will discuss at a subsequent time with reference to my testimony on the original charges in this matter, and that is all that I can tell you specifically and why I choose not to go into it is because I can't prove it.

Senator RUDMAN. But you are going to present witnesses to those portions you just stated——

Judge HASTINGS. I believe you will hear from this afternoon, Senator.

Senator RUDMAN [continuing]. That will address those factual points which you have stated.

Judge HASTINGS. Yes, sir, I believe that testimony will be before you.

Senator RUDMAN. So, Judge Hastings, I guess it is your position that——

Judge HASTINGS. And I knew that when I was in Atlanta. Pardon me, Senator.

Senator RUDMAN. All right. Then, I guess it is your position that, whether we adopt a personal standard, each of us individually, of beyond a reasonable doubt or clear and convincing or preponderance, what you are saying is that, although you don't have specific proof, you believe that we ought to consider your theory, as I understand it, that there was opportunity for someone else to share this information with the mayor——

Judge HASTINGS. Yes.

Senator RUDMAN [continuing]. While at the same time we address the coincidences, which are troubling, Judge Hastings——

Judge HASTINGS. Yes.

Senator RUDMAN [continuing]. That Congressman Bryant points out to us. Those are the two juxtapositions we have to look at.

Judge HASTINGS. In addition to my statement that I didn't tell him one single solitary thing.

Senator RUDMAN. Judge Hastings, I think we've heard your statement under oath.

Judge HASTINGS. Yes, sir.

Senator RUDMAN. Thank you.

Judge HASTINGS. Thank you, Senator.

The CHAIRMAN. Senator Pryor?

Senator PRYOR. Yes, Mr. Chairman, very quickly.

Judge Hastings, let's move, if we could, to your birthday night, September 5th.

Judge HASTINGS. Yes, sir.

Senator PRYOR. You arrived in Fort Lauderdale, you are preparing for the MMAP meeting the next morning?

Judge HASTINGS. Senator, I lived in Fort Lauderdale at the time and I arrived in Miami, at the Hyatt Regency downtown.

Senator PRYOR. All right. Pardon me.

Judge HASTINGS. Yes, sir.

Senator PRYOR. I had the towns mixed up. By the way, how far away are those cities apart? I have been down there and I never can remember.

Senator HASTINGS. They are 18 miles apart, but——

Senator PRYOR. You can't tell the difference.

Judge HASTINGS. Well, they are two and a half painful hours sometimes, trying to get to and from.

Senator PRYOR. All right.

Judge HASTINGS. Or one hour, at least.

Senator PRYOR. You get to the hotel or to the facility where the MMAP meeting will be and you said you informally visited with people and even stuffed some of the packets with some of the staff.

Judge HASTINGS. I did.

Senator PRYOR. Now, approximately what time did you arrive?

Judge HASTINGS. I got there about 8:00 o'clock in the evening and I was with them until sometime after.

Senator PRYOR. All right. Did you at that time, did you during the course of that evening have dinner?

Judge HASTINGS. I don't think I did, Senator Pryor. I don't remember whether I did. I think that I went back to Fort Lauderdale and came back to Miami, and it would have been in that interim that I may have had food. I had no dinner with any of those individuals that I recall.

Senator PRYOR. I see. Did you have, at that time in 1985, did you by chance have a telephone in your automobile?

Judge HASTINGS. No, sir. I never have had and never will have.

Senator PRYOR. I'm with you on that point.

Judge HASTINGS. No, sir, I didn't have one, Senator.

Senator PRYOR. I think that's all the questions I have. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Lieberman?

Senator LIEBERMAN. No questions, Mr. Chairman.

The CHAIRMAN. Senator Durenberger?

Senator DURENBERGER. Thank you.

Judge Hastings, I wonder if I couldn't try to put the March 1986 events in your life into some larger perspective, with your help.

Judge HASTINGS. Yes, sir.

Senator DURENBERGER. As I recall the sequence of events, the indictment on the bribery charge was handed down in December 1981.

Judge HASTINGS. In December, December 29th.

Senator DURENBERGER. Right. That was followed by the conviction of Borders and, on about February 4, 1983, of your acquittal.

Judge HASTINGS. Yes, sir, February 5th was my acquittal. Borders' conviction was sometime in 1982, if I'm not mistaken.

Senator DURENBERGER. Then, shortly—and here is where you are going to have to help me a little bit—shortly after your acquittal—and this House report says I think March 17, 1983—the Chief Judge of the United States District Court for the Middle District of Florida and the Chief Judge of the United States District Court for the Southern District of Georgia filed a verified written complaint with the United States Court of Appeals for the Eleventh Circuit, alleging misconduct on your part.

Judge HASTINGS. Yes, sir.

Senator DURENBERGER. And I take it that began a process which, in one way or another, was hanging over you during 1985 and 1986?

Judge HASTINGS. 1985, 1986, yes, sir.

Senator DURENBERGER. The Investigating Committee that was appointed looks like it took approximately, what, three years?

Judge HASTINGS. Three-and-a-half years, Senator Durenberger.

Senator **Durenberger**. And they finally got a report out when? Do you recall when that report was?

Judge **Hastings**. I don't remember the exact date, but their report went on to the Judicial Conference, and I would think that it would have been sometime in 1987 that the Judicial Council's report from the five-judge investigating panel went to the Judicial Conference, then chaired by Chief Justice Burger on his last day and the first day of Chief Justice Rehnquist.

Senator **Durenberger**. It says here that—by the way, we might be talking about two different things—on September 2, 1986, the certification to the effect that the Judicial Council of the Eleventh Circuit had accepted the report——

Judge **Hastings**. Yes, sir.

Senator **Durenberger** [continuing]. Was made to the Judicial Conference of the United States——

Judge **Hastings**. That's right, yes, sir.

Senator **Durenberger** [continuing]. Then in 1987 it went to the House.

Judge **Hastings**. Yes, sir.

Senator **Durenberger**. OK. So, during the early part of 1986, you have this other investigation hanging over you, one way or the other.

Judge **Hastings**. Yes, sir.

Senator **Durenberger**. Now, with that in mind, would you just recount for us again, what was the first evidence that you had that you were going to be involved in some way or another in this Steve Clark wiretap?

Judge **Hastings**. From a newspaper reporter, and I don't remember which of two, but there were two newspaper reporters that came to me, and at that time it was startling to me that they had what I know now and thought then to be information that purportedly was before a grand jury, Senator.

Senator **Durenberger**. Can you recall the approximate date that they came to you?

Judge **Hastings**. No, sir, I cannot.

Senator **Durenberger**. Can you recall the month?

Judge **Hastings**. It would have been in March, I believe.

Senator **Durenberger**. March 1986?

Judge **Hastings**. Yes, sir.

Senator **Durenberger**. And they came to you at your office?

Judge **Hastings**. Yes, sir.

Senator **Durenberger**. Can you remember the conversation? Do you remember the first question you got?

Judge **Hastings**. I can't, Senator. Both of them were very direct and both of them suggested that I may have leaked information to Mayor Clark, whenever it was that they came to me.

Senator **Durenberger**. Well, you didn't know anything about a grand jury meeting that month, did you?

Judge **Hastings**. Oh, no, sir, I had no knowledge of same until the reporters advised me that it had occurred.

Senator **Durenberger**. So, the reporters would have had to tell you that there was a grand jury investigation?

Judge **Hastings**. Yes, sir.

Senator Durenberger. That Mayor Clark had appeared at the grand jury?

Judge Hastings. And that is what astounded me.

Senator Durenberger. And that he had, during the course of that appearance, alleged that you told him one of those five versions——

Judge Hastings. I don't know all of the particulars, but I left with the notion that I was a subject of what was going on in that grand jury.

Senator Durenberger. Can you recall what you told the reporters?

Judge Hastings. I don't recall everything that I said. I know at some point in time I told Brian Duffy, in response to a question from him, that I didn't tell Steve Clark one goddamn thing.

Senator Durenberger. Do you recall how much time passed from the first conversation with the first reporter, which is your first information on the subject, to your discussion with Judge King?

Judge Hastings. It would have been—we are in jury trials all the time, and I'm not saying that in defense of the court, but it's a fact, and my belief is that I was on some break and the reporter said something to me and it would have been the day of my receiving that information or, if Judge King was not available, the very next day, but I recall the time. It was after normal court duties and it would have been sometime around the 6:00 o'clock hour that I spoke with Judge King, but it would have been in and around the exact same period of time that the reporter gave me that information.

Senator Durenberger. And that was the only conversation you had with Judge King on this subject?

Judge Hastings. That was the only conversation I had with him with reference to the matter. At some other point, I may have, once it was in full bloom in the newspapers, informed him what my status was, and when the complaint was filed by William Weld of the Attorney General's office, I advised Judge King about that.

A little different than some, I believe it is important for the Chief Judge to be on top of things and not have things come to him and I tried to exercise myself accordingly, and so it is for that reason that I lay very close with the chief judge in informing him about what I'm doing, what is happening to me. I've been, to put it mildly, a study of the court system as to functioning under this kind of awesome investigatory undertaking, and so I wanted him fully informed at every stage.

Senator Durenberger. Between the time this information first came to you from a reporter and the time you spoke to Judge King——

Judge Hastings. Yes, sir.

Senator Durenberger [continuing]. With whom did you speak on this subject, with whom else did you speak on this subject?

Judge Hastings. No one.

Senator Durenberger. And subsequent to speaking to Judge King, with whom did you discuss the subject?

Judge Hastings. My mama.

Senator Durenberger. Your mother?

Judge **Hastings**. Yes.

Senator **Durenberger**. Between the time you spoke—did you speak to your mother on the same day that you spoke to the judge?

Judge **Hastings**. No, it was when it was in full bloom, and by that time I was preparing her to get ready for whatever this onslaught was getting ready to be in the media.

Senator **Durenberger**. And sometime in May 1986, you had this telephone conversation or this conversation with Agent Mazzella?

Judge **Hastings**. I believe the date on what I have in front of me is May 19th, Senator Durenberger.

Senator **Durenberger**. Between the time you spoke to Judge King and the time you spoke to Agent Mazzella, is your mother the only person with whom you spoke on this subject?

Judge **Hastings**. I don't want to make that representation, because I believe at some point I would have told Patricia Williams and Terence Anderson, who were both involved in my representation, and so it is conceivable that I informed them. I know by the time that the complaint was filed, that I was speaking with both of them, but I have no independent recollection of who I spoke with, nor, Senator, do I wish to give the impression that I'm fixed on when the date was that these articles appeared in the Herald. I would have to have them in front of me and to know a bit more about what was being said at that time.

Senator **Durenberger**. I am not trying to pin down the dates——

Judge **Hastings**. Yes, sir.

Senator **Durenberger** [continuing]. But I am also trying to determine what your rationale is for an enraged reaction which is conveyed only to one person, that is the chief judge.

Judge **Hastings**. The person who I turned to on my court, and I knew of nothing that I can think of as we speak, Senator, that would cause me to go to anyone else. But I can tell you this much, I know how authorities function to a relative degree, and by the time that Agent Mazzella called me and he and I spoke, when we finished our conversation I was girding up for an indictment, because I thought that that is where they were getting ready to come from.

Senator **Durenberger**. You see, I don't want to belabor the point, but I am troubled by the fact that your reputation is already in some question.

Judge **Hastings**. Yes. Indeed.

Senator **Durenberger**. Obviously, there are those who express no difficulty doing business with you after the acquittal and so forth.

Judge **Hastings**. Sure.

Senator **Durenberger**. But at least in that community, your reputation is in some question. All of a sudden, right in the middle of that comes what I guess, if I were in your shoes, I would consider some sort of a bomb, which is the Mayor of Dade County accuses me of leaking confidential wiretap information.

Judge **Hastings**. I was incensed then and I'm outraged now, Senator.

Senator **Durenberger**. How is it that you were able—maybe you can help me with this—how is it that you were able to restrain that much outrage from the community during that period of time, and why?

Judge HASTINGS. Well, if you want me to wax philosophical, I will, but all I can tell you is that I have the good fortune of living with my mother and having some very strong supporters who know that there would be no reason for me to continue with this whole thing, if I were not prepared to tell the truth. I guess the easiest thing to tell you is that I'm propped up by that notion and also my spiritual connection insofar as how I foresee right and wrong.

Senator DURENBERGER. Thank you.

The CHAIRMAN. Are there further questions from the committee? Senator Lieberman?

Senator LIEBERMAN. Judge Hastings, one statement, really, and then one brief question. I don't want to let pass something you said earlier, because I want you to know that I appreciate it and admire it, which is that in your opinion, if we found in this case or some future Senate found in some other case that a Federal judge had intentionally disclosed confidential wiretap information, and that is an impeachable offense in your opinion——

Judge HASTINGS. My lawyer——

Senator LIEBERMAN [continuing]. I share that opinion and I admire you for saying it here, because I think it upholds the high standards that we should uphold for the Federal bench.

Judge HASTINGS. Senator Lieberman, my lawyers and I quarreled about that and I insisted to offer no motion of resistance to Article 16, for the reason that, in spite of what they say, I believe that the breaching of confidential aspects of wiretaps or anything else that is confidential in the courts should rise to the level of an impeachable offense. I believe that judicial accountability ought to be always on the table and judges should be circumspect and above reproach, and I believe that that is an important facet in a person being a United States District Court judge, and if he or she can't function along those lines, not only if they breach those confidences should they be impeached, I believe they ought to be railed into a posture of ignominy in their respective communities.

Senator LIEBERMAN. I appreciate your statement and I agree with it. Thank you for it.

Let me just ask you one brief question on a totally different point. Obviously, Mayor Clark's credibility and memory is somewhat in question here in these proceedings, but he did say quite clearly when he testified before us that he did write a letter on your behalf when you were seeking appointment as a Federal judge. He did not remember who asked him to do it.

Judge HASTINGS. Yes, sir.

Senator LIEBERMAN. I just wanted to ask you once again, I know it is ten years ago. You indicated you thought it might be in response to an FBI systematic investigation of potential nominees. He remembered a letter that somebody asked him—can you search your memory and have any recollection of who, a friend or colleague who was supporting your nomination that might have asked Mayor Clark to——

Judge HASTINGS. No, sir, Senator Lieberman. As a matter of fact, I know that I did not. I didn't know the mayor, so there would be no reason or opportunity for me to ask him to write a letter on my behalf. But I think, as functionaries in our respective communities, we do a lot of things for political figures.

If the Senator will permit me overnight, I will go into materials that I have, and I believe it is in the investigative report of Chief Judge Roney where these matters were originally reposed, and I believe that I can pull up for you by morning, sir, the fact that there was at least a routine investigation where Mayor Clark was sought to give an opinion, as is routinely done, even when persons do not know the person that is a subject nominee.

I could not find the letter that he sent to me or sent on my behalf, and I know I didn't ask him for one. But if you will permit me, I will get what I was referring to, because I think it is in all of the documentation.

Senator LIEBERMAN. I would appreciate that.

Judge HASTINGS. Yes, sir.

Senator LIEBERMAN. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Are there other questions by the committee?

[No response.]

The CHAIRMAN. If not, Judge, we very much appreciate your testimony and you will, as I understand it from your counsel's list of witnesses, you will be recalled later on the other matters pending before us.

Judge HASTINGS. Most assuredly. Thank you.

The CHAIRMAN. Would counsel for the Respondent call their next witness, please?

Mr. ANDERSON. We call Agent Thomas Dowd or Tom Dowd.

The CHAIRMAN. Would you raise your right hand, please?

Do you, Tom Dowd, swear and affirm that the evidence you shall give in the case now pending between the United States and Judge Alcee L. Hastings shall be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. DOWD. I do.

The CHAIRMAN. Please be seated.

Senator RUDMAN. Mr. Chairman, may I ask a question?

The CHAIRMAN. Yes, you may.

Senator RUDMAN. I would just like to ask a question of the Chair, with particular attention from Judge Hastings and his counsel.

Judge Hastings has now appeared as a witness under oath. I would just like to know, so if the committee is going to have to discuss this, we get a chance to discuss it before it happens, maybe not today but tonight, if Judge Hastings is going to participate further as an active counsel in either the direct or cross-examination of any witnesses.

Judge HASTINGS. I have no intention of doing so.

Senator RUDMAN. Well, I'm sure the judge knows why I asked the question, and I appreciate it and I guess that won't be a problem.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Mr. Anderson, you can proceed.

TESTIMONY OF TOM DOWD

DIRECT EXAMINATION

Mr. Anderson. Thank you.

Mr. Dowd, would you tell the committee who you are and by whom you are employed?

Mr. Dowd. Agent Tom Dowd, FBI Miami.

Mr. Anderson. How long have you been employed by the FBI?

Mr. Dowd. Twenty-five years.

Mr. Anderson. How long have you been in Miami?

Mr. Dowd. Since 1970.

Mr. Anderson. And directing your attention to the year 1985, what was your position in the FBI then?

Mr. Dowd. Special Agent.

Mr. Anderson. And were you with any particular squad?

Mr. Dowd. I was assigned to a narcotics squad.

Mr. Anderson. Now, at that time, Agent Dowd, did you know Mayor Clark?

Mr. Dowd. Yes, I did.

Mr. Anderson. And do you recall how you met him?

Mr. Dowd. I believe I initially met him in 1976 or 1975, through a mutual friend.

Mr. Anderson. And do you recall who the friend was?

Mr. Dowd. Yes, Special Agent Jerry Forester.

Mr. Anderson. And was Agent Forester assigned to the Miami office?

Mr. Dowd. At that time, yes.

Mr. Anderson. And had you prior to 1985 also met a man named Peter Ferguson?

Mr. Dowd. That's correct.

Mr. Anderson. And had you met a man named Glenn Whittle?

Mr. Dowd. Yes.

Mr. Anderson. Did you know someone named H. Paul Rico?

Mr. Dowd. Yes.

Mr. Anderson. And how did you happen to know Mr. Rico?

Mr. Dowd. Well, Mr. Rico retired from the Miami office in 1975.

Mr. Anderson. He was an FBI agent until then?

Mr. Dowd. That's correct, and my wife works for H. Paul Rico at Miami Jai Alai.

Mr. Anderson. Had your wife formerly been employed by the FBI in Miami?

Mr. Dowd. That's correct.

Mr. Anderson. In what capacity?

Mr. Dowd. At the time that she left the FBI, I think she was employed as what we would call a special clerk.

Mr. Anderson. And what do special clerks do, generally?

Mr. Dowd. They do reference checks with the other agencies in the Dade County area.

Mr. Anderson. And can you try to avoid leading questions, Agent Dowd. Was Mayor Clark at your wedding?

Mr. Dowd. Yes, he performed the ceremony.

Mr. Anderson. And where was that ceremony performed?

Mr. Dowd. At the Miami Springs Country Club.

Mr. ANDERSON. And that was on the golf course?

Mr. DOWD. Well, at the country club.

Mr. ANDERSON. At the country club. Now, did there come a time in the summer of 1985 when you received a telephone call from Glenn Whittle?

Mr. DOWD. That's correct.

Mr. ANDERSON. Do you recall when and the content of that call? Would you share that with the committee?

Mr. DOWD. I recall the date of July 23rd. The time I do not recall. I could venture a guess as to the morning.

Mr. ANDERSON. OK. And to the best of your recollection, what did Mr. Whittle say to you and what did you say to him?

Mr. DOWD. Well, in summary, he alluded to the fact or requested of me, was there an investigation by the FBI into the activities of Peter Ferguson and Mayor Stephen Clark.

Mr. ANDERSON. And after that call, what did you do, Agent Dowd?

Mr. DOWD. Basically, I told him I would call him back. I went and got my supervisor, we discussed the nature of the call to me, I called Mr. Whittle back in the presence of my supervisor, in effect reprimanded him for having called me, in the first place to divulge such information. Basically, that was it.

Mr. ANDERSON. Well, did there come a time in the future when you were asked to recount the story again, you were interviewed about this incident?

Mr. DOWD. Several times.

Mr. ANDERSON. Well, could you share with the committee, when was the first time you were called and questioned about it?

Mr. DOWD. I believe an investigator from the Eleventh Circuit came to Miami, and then I believe Mr. Baron and then I believe a young lady from Mr. Baron's staff, three separate occasions.

Mr. ANDERSON. Three separate occasions. To the best of your recollection, it was an investigator from the Eleventh Circuit Special Committee who was the first person?

Mr. DOWD. Yes.

Mr. ANDERSON. Both, in the interest of time and because FBI are at least ostensibly adverse, may I lead this witness slightly, to just try and aide the committee here? I have the names of the investigators and their memoranda and I don't think he is going to disagree with me. I just want to get——

The CHAIRMAN. Why don't you proceed and see. If it is obviously information that is not in contention, we will permit some degree of that.

Mr. ANDERSON. Do you recall that the person who first interviewed you was Bernard Taylor, a counsel for the Investigating Committee or the Special Committee of the Eleventh Circuit?

Mr. DOWD. Not by name, but if you say so, I have no reason to doubt it.

Mr. ANDERSON. OK. And do you recall what date that took place?

Mr. DOWD. No, sir.

Mr. ANDERSON. But at the time of that interview, were you told that the special committee of judges was looking into the matter of a possible Title III disclosure?

Mr. DOWD. That's correct.

Mr. ANDERSON. And that it concerned Judge Hastings?

Mr. DOWD. It concerned Judge Hastings and my memoranda.

Mr. ANDERSON. And the next occasion you recall was conversation with Mr. Baron?

Mr. DOWD. That's correct.

Mr. ANDERSON. And do you recall when that took place?

Mr. DOWD. I'm sorry, but I would say it was a six-month period after Mr. Taylor's visit.

Mr. ANDERSON. And prior to those conversations, apart from your file memorandum, you do not recall being interviewed or discussing that?

Mr. DOWD. No.

Mr. ANDERSON. I have no further questions of this witness.

The CHAIRMAN. Is there cross examination of the witness?

CROSS EXAMINATION

Mr. BARON. Mr. Dowd, what was your reaction when Mr. Whittle called you to make the inquiry that you described back in July 1985?

Mr. DOWD. I would say it was one of shock and puzzlement.

Mr. BARON. And it led you to contact your supervisor and ask for their guidance as to how to deal with the situation?

Mr. DOWD. That is correct.

Mr. BARON. In July 1985, did you know that there was a Title III wiretap on Kevin Gordon?

Mr. DOWD. No.

Mr. BARON. Indeed, did you know at that time who Kevin Gordon was?

Mr. DOWD. No.

Mr. BARON. Did you know of an individual by the name of Waxy Gordon?

Mr. DOWD. No.

Mr. BARON. Did you call Mr. Whittle back?

Mr. DOWD. Yes.

Mr. BARON. And that was in the presence of your supervisors?

Mr. DOWD. Correct.

Mr. BARON. And I believe your testimony was you basically told him that it was inappropriate for him to have called and you were angry about the fact that he called?

Mr. DOWD. Him making such a request of me.

Mr. BARON. All right. Are you close to Mayor Clark?

Mr. DOWD. No.

Mr. BARON. If you were found to have leaked an undercover operation to someone who was not appropriately a recipient of that information, is it fair to say that that would end your career in the FBI?

Mr. ANDERSON. Objection. Speculative and irrelevant to this case.

The CHAIRMAN. The objection will be overruled. If the witness has an opinion on that, he can express it.

Mr. DOWD. In my mind, it would be grounds for dismissal from the FBI.

Mr. BARON. Have you ever done undercover work for the FBI?

Mr. DOWD. No, sir.

Mr. BARON. Are you familiar with some of your colleagues who have done such work?

Mr. DOWD. Yes, sir.

Mr. BARON. Do you recognize it as dangerous work on occasion?

Mr. DOWD. Absolutely.

Mr. BARON. Was there anything in your relationship with Mayor Clark, Mr. Whittle, Mr. Rico, or anyone else which would motivate you to give information to any of them concerning any FBI investigation?

Mr. DOWD. No, sir.

Mr. BARON. I have no further questions.

The CHAIRMAN. Is there any redirect examination?

Mr. ANDERSON. No, Mr. Chairman.

The CHAIRMAN. I have no questions of this witness.

Senator Specter?

The VICE CHAIRMAN. Thank you. No, Mr. Chairman, no questions.

The CHAIRMAN. Are there questions, Senator Lieberman?

EXAMINATION BY THE COMMITTEE

Senator LIEBERMAN. Mr. Chairman, just one.

I am curious: If Mayor Clark is not a friend of yours, how did he come to officiate at your wedding? There has been the presumption throughout these proceedings that you were close because he presided at your wedding and I wanted to hear the story.

Mr. DOWD. Well, my current wife and I are divorced Catholics and we could not get married in a church ceremony. So, I was talking to one of my associates about the problem and he was a friend of Mayor Clark's and he said here is one way we can do it and he made the call on my behalf.

Senator LIEBERMAN. Somebody at the FBI?

Mr. DOWD. That's correct.

Senator LIEBERMAN. Who was that?

Mr. DOWD. Jerry Forrester.

Senator LIEBERMAN. Was that one of the people who was one of the mayor's regular golf partners?

Mr. DOWD. I believe that's correct.

Senator LIEBERMAN. How do you spell his last name?

Mr. DOWD. F-o-r-r-e-s-t-e-r.

Senator LIEBERMAN. Thank you.

The CHAIRMAN. Are there any further questions?

Senator BRYAN. Let me ask just one other question. As this evidence unfolds, Agent Dowd, it seems like the Mayor had an inordinate number of FBI agents as golf partners.

Mr. DOWD. I was not one of them, sir.

Senator BRYAN. You were not one of them?

Mr. DOWD. No.

Senator BRYAN. But I mean did the mayor have, to the best of your knowledge, a special—and I don't mean to imply an improper relationship, but a special or a close relationship with a number of your colleagues in the Department?

Mr. Dowd. Well, I don't know how to refer to it, but I did know he played on a regular basis with two of the agents from our office, regular being in a foursome, maybe two or three times a month

Senator Bryan. That would be Agent Forrester and the other agent, if you can help me out, I know his name has been——

Mr. Dowd. I believe it is Anthony Amoroso.

Senator Bryan. Are those the only, at least to your knowledge, were they the only two agents——

Mr. Dowd. Those were the only two, right.

Senator Bryan [continuing]. Who had a close relationship, let's characterize it, or at least——

Mr. Dowd. Well, I don't know if it's social, but if golf is social, then it's social.

Senator Bryan. Now, during the course that you were meeting from time to time and you were discussing with your fellow agents, did Mayor Clark's name come up frequently as social contacts by either of these two other agents?

Mr. Dowd. No, they strictly spoke of the mayor in the golf sense, as being a member of their foursome on Sunday or what have you.

Senator Bryan. But, obviously, felt close enough to him to ask him to——

Mr. Dowd. Officiate at my wedding.

Senator Bryan [continuing]. Officiate at your wedding?

Mr. Dowd. That's correct.

Senator Bryan. Did you ever have any other association with the mayor, other than that occasion of your wedding?

Mr. Dowd. I might have been in his company maybe twice in the last 15 years, other than the wedding.

Senator Bryan. And in what context was that association?

Mr. Dowd. Well, I think I was at the golf course, played in his foursome about 16 years ago, and I was at a wedding last August where he was also in attendance.

Senator Bryan. Together with a number of other people?

Mr. Dowd. Approximately 200.

Senator Bryan. Thank you, Mr. Chairman.

The Chairman. Mr. Dowd, let me just ask a couple of other questions. Is it the FBI policy, based on your 25 years' experience, that if you receive a request from a member of the public about whether a particular individual is under investigation, if there is no investigation at that time, is it common to refuse a comment, or does the FBI have a policy that they will confirm the lack of an investigation?

Mr. Dowd. Well, if such a request was made to you, I would immediately refer it to my supervisor. I would not——

The Chairman. As you did in this case?

Mr. Dowd. In this case—and make an official record to him of the request. I would not go to the extent of checking the records to see if there was or there was not an investigation. I would not do that.

The Chairman. But are you familiar with circumstances where questions like that, when referred to a supervisor, the supervisor will authorize the agent or himself will deny that an investigation exists?

Mr. DOWD. That is not the policy in the Miami office and I believe throughout the FBI. Such a matter would go to the supervisor, perhaps if there was as sensitive an investigation, it would go to the SAT or perhaps to our media person, if it was a request from the media, but the general answer is no.

The CHAIRMAN. As the normal course, you would not——

Mr. DOWD. We never release that type of information.

The CHAIRMAN [continuing]. You will never deny that an investigation is being conducted?

Mr. DOWD. That is correct.

The CHAIRMAN. Even when it is——

Mr. DOWD. We will deny nor confirm.

The CHAIRMAN. I see. All right.

Any other questions by the committee? If not——

Senator PRYOR. Mr. Chairman, pardon me one moment.

The CHAIRMAN. Senator Pryor?

Senator PRYOR. Tell me who Mr. Whittle was, if you would.

Mr. DOWD. Mr. Whittle was a gentleman I met back in 1973 or 1974, and I met him I believe at a golf course where he was also participating in a tournament.

Senator PRYOR. But was this shocking to you that someone that you knew would call you up like this, an occasional acquaintance like that?

Mr. DOWD. Absolutely, Senator.

Senator PRYOR. That is why you went to your supervisor?

Mr. DOWD. Yes.

Senator PRYOR. Thank you.

The CHAIRMAN. Is there any reason this witness cannot be excused?

The VICE CHAIRMAN. I have one question, Mr. Chairman.

The CHAIRMAN. Senator Specter.

The VICE CHAIRMAN. Just one follow-up question: Was any effort made to find out by you or anybody else in the FBI what Mr. Whittle's information was or how he came to know something about this pending investigation?

Mr. DOWD. To the best of my knowledge, Senator, no. It was not done by myself. To the best of my knowledge, there was no active investigation to make that determination.

The VICE CHAIRMAN. Did it surprise you that that kind of an inquiry would come from Mr. Whittle?

Mr. DOWD. Yes, sir.

The VICE CHAIRMAN. Well, why wasn't something done about it, to make a determination as to whether there had been some sort of a leak that had come to Mr. Whittle's attention?

Mr. DOWD. That was not my decision to make, Senator. I directed my memoranda to the file, and if it was to be acted upon, a supervisor or someone above him would make that decision——

The VICE CHAIRMAN. And you had discussed it——

Mr. DOWD [continuing]. A follow-up.

The VICE CHAIRMAN. And you had discussed it with your supervisor?

Mr. DOWD. At that time, yes.

The VICE CHAIRMAN. But you don't know what action, if any, he took?

Mr. Dowd. I believe he sent it upstairs to the Assistant Special Agent in charge.

The Vice Chairman. But you don't know what action, if any——

Mr. Dowd. No, sir.

The Vice Chairman [continuing]. The Special Agent in charge took?

Mr. Dowd. That's correct. I believe it was made known to the United States Attorneys Office.

The Vice Chairman. How do you know that?

Mr. Dowd. Because my supervisor told me that, I believe the Assistant Special Agent in charge—and I can't speak specifically—advised the Assistant United States Attorney handling the prosecution, whose name I do not know.

The Vice Chairman. Thank you very much.

Senator Rudman. Mr. Chairman, Senator Specter has raised one issue I would like to follow up on.

The Chairman. Senator Rudman.

Senator Rudman. Special Agent Dowd, do I understand your answer to Senator Specter that you don't have any idea of the basis of Mr. Whittle's inquiry, why he made it?

Mr. Dowd. Why he made it?

Senator Rudman. Right. I think Senator Specter asked you if you followed up and had some idea why he made the inquiry.

Mr. Dowd. I can only respond to that by saying, Senator, I was annoyed, puzzled and shocked that he made that inquiry. Why he made it of me, I cannot answer that question.

Senator Rudman. Let me read to you from a memorandum dated July 24, 1985, to Special Agent in Charge, Miami, from Tom Dowd, Special Agent 06, subject: ILA, etc. The last two paragraphs outline what you've testified about, and here's the last paragraph:

"A call was then made to Whittle, in the presence of SSA McNally, and he was advised as above. Whittle stated his concern existed because, 'Your wife's boss is a great kidder.' "

Can you explain that to me?

Mr. Dowd. Apparently, he is alleging that he or someone else had a conversation with Mr. Rico, wherein Mr. Rico allegedly stated that perhaps he should contact the FBI to see if there was an investigation into the activities of Mayor Clark or Peter Ferguson.

Senator Rudman. Agent Dowd, that was Senator Specter's question.

Mr. Dowd. I'm sorry if I——

Senator Rudman. And that was my question.

Mr. Dowd. OK.

Senator Rudman. Thank you.

The Chairman. Are there additional questions from the committee?

[No response.]

The Chairman. Is there any reason this witness cannot be excused?

[No response.]

The Chairman. If not, you are excused, Mr. Dowd. Thank you very much for your testimony.

Would Respondent please call the next witness.

Mr. **Anderson**. Respondent calls H. Paul Rico.

Judge **Hastings**. While Mr. Rico is coming in, Mr. Chairman, what Senator Lieberman requested, I was able to find. Could I give it to the clerk and have him supply it to Senator Lieberman and other Senators who may be interested?

The **Chairman**. Did we want to offer this as an exhibit to the record, is that an appropriate thing——

Judge **Hastings**. I don't think he asked for it as an exhibit and I wasn't offering it. I was only supplying it for information for Senator Lieberman.

The **Chairman**. Okay. We will just accept it.

Mr. **Anderson**. Mr. Chairman, it also is in the book which most of you are referring to.

The **Chairman**. Mr. Rico, do you understand you are still under oath before this committee?

Mr. **Rico**. Yes.

The **Chairman**. Please be seated.

TESTIMONY OF H. PAUL RICO (continued)

DIRECT EXAMINATION (continued)

Mr. **Anderson**. Mr. Rico, to refresh the committee's recollection, were you employed as an FBI agent for most of your career?

Mr. **Rico**. Yes.

Mr. **Anderson**. And when did you retire, sir?

Mr. **Rico**. The end of April 1975.

Mr. **Anderson**. And what was your duty station at that time?

Mr. **Rico**. Miami.

Mr. **Anderson**. How long had you been in Miami?

Mr. **Rico**. Five years.

Mr. **Anderson**. And during your association there, had you developed both a friendship and a working relationship with Anthony Amoroso?

Mr. **Rico**. Yes.

Mr. **Anderson**. Did you know an agent Jerry Forrester?

Mr. **Rico**. Yes.

Mr. **Anderson**. And an agent Tom Dowd?

Mr. **Rico**. Yes.

Mr. **Anderson**. And I take it you knew a number of agents.

Mr. **Rico**. Yes.

Mr. **Anderson**. About how many agents were in Miami at that time in the FBI?

Mr. **Rico**. Probably assigned to the office, around 100, but not all in headquarters.

Mr. **Anderson**. When you retired, where did you go to work?

Mr. **Rico**. Miami Jai Alai.

Mr. **Anderson**. And in what capacity were you hired at Miami Jai Alai?

Mr. **Rico**. Director of Security.

Mr. **Anderson**. And what is your present position at Miami Jai Alai?

Mr. **Rico**. I'm the general manager.

Mr. **Anderson**. And when did you become general manager?

Mr. **Rico**. Either early 1976 or late 1975.

Mr. ANDERSON. Now, does Miami Jai Alai employ other former FBI agents?

Mr. RICO. Yes.

Mr. ANDERSON. About how many?

Mr. RICO. We have two other former agents.

Mr. ANDERSON. And do you have other former FBI employees?

Mr. RICO. Yes.

Mr. ANDERSON. There has been some testimony that Mrs. Dowd is one of those, is that correct?

Mr. RICO. Yes.

Mr. ANDERSON. Are there other additional——

Mr. RICO. There's one more, yes.

Mr. ANDERSON. Now, am I correct, Mr. Rico, that there is a fairly active retired FBI Agents Association in Miami?

Mr. RICO. Yes, I would say that it is fairly active.

Mr. ANDERSON. About how often does that get together?

Mr. RICO. I think they try to meet approximately once a month. In the summertime, they may miss a month.

Mr. ANDERSON. And do they frequently invite an active member, the agent in charge or someone who is actively in the FBI to speak to them?

Mr. RICO. Yes.

Mr. ANDERSON. Is that a fairly social group?

Mr. RICO. Yes.

Mr. ANDERSON. Now, Mr. Rico, did you, to the best of your recollection, on or about sometime in July 1985 suggest to Glenn Whittle that he might call Agent Tom Dowd to inquire about whether the FBI was investigating Mayor Clark or Peter Ferguson?

Mr. RICO. Absolutely not.

Mr. ANDERSON. So, you never made that suggestion to Glenn Whittle?

Mr. RICO. No.

Mr. ANDERSON. Did you at that time, sir, were you aware that there was any grounds why Peter Ferguson or Mayor Clark might have concern that they were under investigation?

Mr. RICO. No.

Mr. ANDERSON. Did you know Mayor Clark at that time?

Mr. RICO. Yes.

Mr. ANDERSON. And how had you met him, to the best of your recollection? Do you play golf?

Mr. RICO. Yes, I probably met him through golf tournaments, right.

Mr. ANDERSON. And how did you come to meet Pete Ferguson, if you had?

Mr. RICO. I think at that time he was active in the golf tournaments also.

Mr. ANDERSON. But it is your recollection that you never made any suggestion to Glenn Whittle or anyone else that they make a call on the Mayor or Peter Ferguson's behalf?

Mr. RICO. Absolutely.

Mr. ANDERSON. Did there come a time when someone contacted you to inquire into, to ask you the same question I just asked you?

Mr. RICO. Yes.

Mr. ANDERSON. Do you recall when that was?

Mr. Rico. No, I have no distinct memory of the timing.

Mr. Anderson. OK. Do you recall how the contact came about, which may help us fix it in time?

Mr. Rico. I received a telephone call.

Mr. Anderson. And from whom was that telephone call?

Mr. Rico. I believe Chris Mazzella called me.

Mr. Anderson. Mr. Chairman, in order to try and refresh the witness' recollection, might I show him a memorandum after first showing counsel?

The Chairman. You may.

Mr. Anderson. After your recollection that Agent Mazzella called you, do you recall what happened next with respect to this matter?

Mr. Rico. I believe that Agent Mazzella called me again and asked me to speak to somebody that was down in Miami conducting an investigation of this matter.

Mr. Anderson. And about how much time had elapsed between Agent Mazzella's first call and the time he called you and asked you to speak to them?

Mr. Rico. I really have no distinct memory, I have no memory of that.

Mr. Anderson. Were those two pretty close together?

Mr. Rico. Yes, I would say——

Mr. Anderson. It wasn't one year and then the next year, we are talking of within about your best estimate of this time, how long, a week, two weeks?

Mr. Rico. I have no—I couldn't swear to any particular time. It could be a week, it could be 10 days, something like that maybe.

Mr. Anderson. But those two events were in reasonably close proximity, is that correct?

Mr. Rico. I think so.

Mr. Anderson. And did you then talk to someone, as Agent Mazzella had suggested?

Mr. Rico. Yes.

Mr. Anderson. Again, I wonder if I might now show him——

The Chairman. Is this to be introduced as an exhibit? What is this?

Mr. Anderson. I am really trying to keep the record not being cluttered. It is materials that you all have in your book, but it is simply a report of an investigative interview and, if it refreshes the witness' memory, I won't bother to put——

Mr. Baron. The only point I would make, Mr. Chairman, the witness hasn't said that he doesn't remember it. He just hasn't been asked whether he was interviewed by somebody else. Now, if he doesn't have a recollection, sure, he can refresh it, but I'm not sure it is a problem at this point.

Mr. Anderson. What he has said is he does have a recollection of being interviewed, but he doesn't know when. I am trying to fix it in time.

The Chairman. You may show him the document.

Mr. Anderson. Mr. Rico, let me show you a memorandum and ask you to read it and see if it refreshes your recollection.

Mr. Rico. No. This doesn't do my independent recollection, anything to it, no.

Mr. ANDERSON. You don't recall the call that's described in there?

Mr. RICO. No, I don't. I don't recall. I don't recall Agent John O'Neill. I mean right now I couldn't tell you who John O'Neill is.

Mr. ANDERSON. It doesn't refresh it?

Mr. RICO. No.

Mr. ANDERSON. And do you recall who it was that was in town that Agent Mazzella suggested you talk to?

Mr. RICO. I don't remember which—it was a Federal investigation, that's all I can recall. I can't remember whether it was the Department of Justice or whoever. I don't know. I have no independent recollection of it.

Mr. ANDERSON. And can you describe the person who you ultimately talked to?

Mr. RICO. I talked to him on the telephone.

Mr. ANDERSON. You talked to him on the telephone?

Mr. RICO. Right.

Mr. ANDERSON. And subsequent to that set of interviews, were you again contacted on this matter?

Mr. RICO. Yes.

Mr. ANDERSON. By whom, if you recall?

Mr. RICO. From I think the—from the House investigator, the attorney.

Mr. ANDERSON. And do you recall when that contact took place?

Mr. RICO. I don't have the date, no.

Mr. ANDERSON. Do you recall whether it was last year or the year before? It only seems like forever I guess?

Mr. RICO. I know it. This is a long long time. I can't pin down the dates. I had no reason to take a note on the date.

Mr. ANDERSON. Now, let me shift, Agent Rico, to a topic that was opened earlier.

You were the—you were called back to duty to serve in an undercover capacity in operation Apple Eye. Is that correct?

Mr. RICO. I don't know what operation it was, but I was called back.

Mr. ANDERSON. Had you prior to your retirement served as an undercover agent?

Mr. RICO. I had.

Mr. ANDERSON. And am I correct in saying that one of the capacities that an undercover agent has to have is the ability to be an extraordinarily able actor?

Mr. RICO. I don't know. I can't tell you that.

Mr. ANDERSON. Doesn't that——

Mr. RICO. Whether that's has to go to acting school or not.

Mr. ANDERSON. Then let me phrase it differently.

I take it that undercover work can be fairly dangerous stuff?

Mr. RICO. Practically anything can be very dangerous. Depends on the circumstances.

Mr. ANDERSON. Have you ever served in an undercover capacity where you felt that the exposure of your identity as an FBI agent might have been dangerous to your health?

Mr. RICO. Certainly.

Mr. ANDERSON. And I take it when you served in that capacity in large measure your health depends on your ability to persuade those with whom you are dealing that you are in fact what you're holding yourself out to be and deceiving them about your true identity as an FBI agent?

Mr. RICO. I think it's helpful.

Mr. ANDERSON. And in that capacity, the ability to persuade them with a straight face?

Mr. RICO. That's true.

Mr. ANDERSON. There is an aspect of deception which is a part of the tool kit of a good undercover agent?

Mr. RICO. Probably.

Mr. ANDERSON. About how many times have you served as an undercover agent in your career?

Mr. RICO. I probably, probably three or four times.

Mr. ANDERSON. To the best of your recollection, has Agent Mazzella ever served in an undercover capacity?

Mr. RICO. I don't know.

Mr. ANDERSON. I don't either.

No further questions.

The CHAIRMAN. Is there cross examination of the witness?

CROSS EXAMINATION

Mr. BARON. At any time in 1985 did you tell Mr. Whittle about anything with reference to investigation of Mayor Clark or Mr. Ferguson?

Mr. RICO. No.

Mr. BARON. Did you know anyone named Kevin Gordon or anyone by the name of Waxy Gordon at that time?

Mr. RICO. No.

Mr. BARON. Have FBI agents who are actively in service ever told you about active investigations of any kind, particularly undercover investigations that they are involved in?

Mr. RICO. No.

Mr. BARON. Have you ever inquired along those lines of any active agent?

Mr. RICO. I had no interest.

Mr. BARON. Going back for a moment to your role in impersonating Frank Romano in connection with the bribery investigation. Am I correct, sir, that all of your contacts with Mr. Borders were subject to monitoring by recording devices?

Mr. RICO. Absolutely.

Mr. BARON. No further questions.

The CHAIRMAN. Is there additional redirect?

[No response.]

The CHAIRMAN. Is there additional direct examination of the witness?

Mr. ANDERSON. No.

The CHAIRMAN. Mr. Rico, the question has been asked. Let me just make it real clear again here.

The memorandum that we have from Tom Dowd to the special agent in charge in Miami, Tim McNally I guess. No, he's not the special agent in charge. But this is a memo to the special agent in charge refers to a telephone call that he, Tom Dowd, received from Glenn Whittle, where Whittle asked this question about whether there was investigation into the activities of the man that married you, meaning Steve Clark, and Pete Ferguson, and then there's this statement in the memo saying that Whittle stated that he had received this information from, "your wife's boss," and I guess that's your wife's boss meaning Tom Dowd's wife's boss, meaning you, and your unequivocal statement to us is that did not occur, that you did not in fact give any such information to Mr. Whittle or anybody else because you were not aware of it.

Mr. RICO. Absolutely true.

The CHAIRMAN. All right.

Senator Specter, do you have questions?

The VICE CHAIRMAN. No questions.

The CHAIRMAN. Any other member of the committee have questions?

EXAMINATION BY THE COMMITTEE

Senator LEAHY. Mr. Chairman.

The CHAIRMAN. Yes, Senator Leahy.

Senator LEAHY. You never met Judge Hastings yourself, did you?

Mr. RICO. I never met Judge Hastings prior to the first trial.

Senator LEAHY. And you never saw him with either Mr. Borders or Mr. Dredge?

Mr. RICO. No, I never did. That's right

Senator LEAHY. You don't know what it was that Mr. Borders said to Judge Hastings to get him to go to the Hotel Fontainebleau?

Mr. RICO. No, I don't.

Senator LEAHY. Are you aware of the case of *Lerner* v. *Moran*?

Mr. RICO. Yes.

Senator LEAHY. Do you remember what the Supreme Court of Rhode Island held in that case?

Mr. RICO. Yes.

Senator LEAHY. What?

Mr. RICO. I don't have the—a distinct memory of the exact terminology that they utilized. I realize that there are great errors in that document. But I don't have it recorded to memory.

Senator LEAHY. I see. Were you involved with the chief prosecution witness in that case?

Mr. RICO. Yes, I was.

Senator LEAHY. And was an allegation made that you had directed the witness to testify falsely about facts in that case?

Mr. RICO. That allegation was made.

Senator LEAHY. And did the Supreme Court uphold that allegation?

Mr. RICO. It did. Without ever calling me to testify.

Senator LEAHY. Fine.

Mr. RICO. Without giving me an opportunity to testify.

Senator LEAHY. I understand. I understand.

Mr. RICO. Right. Right.

Senator LEAHY. Would you like to add anything further to the answer? I'm not trying to—I'm just asking the question. Feel free to elaborate if you want.

Mr. Rico. Well, I can go as long as you want on this. This is a very, you know, important matter to me.

Senator Leahy. I understand.

Mr. Rico. And I'll be glad to set the record straight.

Senator Leahy. In this case you—well, let's take the case at hand. Did you at any time tell Mr. Borders what he was to say or not to say?

Mr. Rico. No.

Senator Leahy. And we have heard the transcript of the taped conversation. All of the conversation you had with Mr. Borders, were they taped?

Mr. Rico. That's right, Senator.

Senator Leahy. And you had never at any time outside of those tapes say to Mr. Borders, now here's what you're suppose to say or not say?

Mr. Rico. No, I never did that, Senator. I never had that opportunity.

Senator Leahy. So what we see—well——

Mr. Rico. I was always——

Senator Leahy. You didn't want that opportunity, did you?

Mr. Rico. No, I didn't. But, you know, make it more interesting. But I didn't have the opportunity and I never did it.

Senator Leahy. So what we heard is what we got?

Mr. Rico. That's right.

Senator Leahy. And it's——

Mr. Rico. It's in stereo.

Senator Leahy. If anybody wants to look at anything you might or might not have said, they've got it black and white on tape?

Mr. Rico. That's it.

Senator Leahy. Thank you. Thank you, Mr. Chairman.

The Chairman. Senator Pryor.

Senator Pryor. Yes. Thank you, Mr. Chairman, I'll be short.

Mr. Rico, in Dade County, is there a regulatory body or a regulatory commission that has jurisdiction over Miami Jai Alai?

Mr. Rico. Sure. Yes.

Senator Pryor. Who names the members of that regulatory body?

Mr. Rico. That's an appointment made by the governor.

Senator Pryor. Does the mayor have any appointive power over any of those so-called commissioners or regulators?

Mr. Rico. Oh, no. No, not at all.

Senator Pryor. What authority would the mayor of Dade County, if any, have over the day-to-day operations of Miami Jai Alai?

Mr. Rico. None. None whatsoever.

Senator Pryor. Does the council or local governing council of the county have jurisdiction to pass any ordinances or law relative to the day-to-day operation or the taxing of Miami Jai Alai?

Mr. Rico. They have occasion to pass on ordinances that could effect and sometimes do effect Miami Jai Alai.

Senator Pryor. For example, taxation?

Mr. Rico. No.

Senator Pryor. Closing or opening times?

Mr. Rico. No.

Senator PRYOR. Hours of operation?

Mr. RICO. No. No.

Senator PRYOR. What types of ordinances would they have authority to enact?

Mr. RICO. Well, they—I can give you an example. Recently somebody thought that they should build an automobile stripping plant on Miami River near Miami Jai Alai, and Miami Jai Alai objected and used all our political power and they're building it. So we lost.

Senator PRYOR. But the mayor himself is not involved in this? Is this part——

Mr. RICO. Yes, the mayor could have been involved in this, but he did not vote on this matter.

Senator PRYOR. Thank you, Mr. Rico. Thank you, Mr. Chairman.

The CHAIRMAN. Any other questions?

[No response.]

The CHAIRMAN. Is there any reason why this witness cannot be excused?

Senator BRYAN. Mr. Chairman.

The CHAIRMAN. Senator Bryan.

Senator BRYAN. Mr. Rico, what was your relationship with Agent Tom Dowd? Had you worked with him when you were still active with the bureau, or was this someone that you met at a later point in time after you'd retired?

Mr. RICO. No. No. I knew Tom in the bureau. I didn't actually—I don't recall ever working with him on a case, but I knew him from the office.

Senator BRYAN. Do you have any question in your mind that Tom Dowd's relating what Whittle told to him is accurate at least insofar as the conversation reported by Whittle to Dowd?

Mr. RICO. I would have no reason to question Tom Dowd on any statement he made.

Senator BRYAN. Your testimony is that you'd never said anything to Glenn Whittle about this case or any other matter involving official business of the bureau?

Mr. RICO. That's true.

Senator BRYAN. When did you first become aware that your name had been mentioned in this context? I'm not talking now about the precise time of the day, but this conversation is alleged to have occurred on the 26th of July, 1985.

Mr. RICO. Um-hum.

Senator BRYAN. That year, the next year, when did you first become aware of it?

Mr. RICO. I think I became aware of it when I got called from, I think it was Chris Mazzella in the bureau.

Senator BRYAN. Do you recall approximately when that is, just to give us some time frame, Mr. Rico?

Mr. RICO. I really had no reason to take a note at the time, and I was, you know, at my office and this was just something that I considered to be routine at the time.

Senator BRYAN. What did you personally do when you heard this? Did you say anything to Mr. Whittle?

Mr. RICO. No. No, I didn't.

Senator BRYAN. But you knew Mr. Whittle from what I understand from the testimony?

Mr. RICO. You are right, I did.

Senator BRYAN. I mean, you never had occasion to talk with him and say, why in the hell would you make that kind of a statement to Tom Dowd? You know that you and I have never talked about this.

Mr. RICO. No, I never said that. I never made that inquiry and I'm not going to get myself involved in conducting an investigation that the bureau has jurisdiction on. I felt that when I retired, I retired, and that my investigative skills should be utilized in my own capacity.

Senator BRYAN. But if indeed the statement that Whittle allegedly made to Dowd is true, you would have had special knowledge of the Title III communication which could place you in some jeopardy presumably in terms of violation of the law, and you as a former agent would be familiar that these are very very sensitive matters to be discussing to anyone under any circumstances.

Mr. RICO. Right.

Senator BRYAN. It was not important to you to in effect clear or vindicate your name other than just to tell the bureau that, hey, I never made any statement to this effect?

Mr. RICO. I have no control over what Mr. Whittle says, and there's no reason for me to be involved in reprimanding him. I felt that this was an official inquiry by the bureau and that they would probably conduct an interview, and that they probably would not have wanted my assistance in this matter.

Senator BRYAN. Did you ever inquire of the bureau as to whether or not they followed up with an interview of Whittle or what became of that aspect of the case insofar as the allegation made against you?

Mr. RICO. I don't feel I'm in that position to ask the agents about anything that's happening in the bureau at any time.

Senator BRYAN. So from your perspective, once you told them, look, I didn't do it——

Mr. RICO. Yes.

Senator BRYAN. You felt it was a closed matter, you had no further interest in terms of its outcome or what ultimately came of the investigation?

Mr. RICO. Oh, I'd like to see it worked out, but I had nothing to do with it and I had no inquiry of Mr. Whittle

Senator BRYAN. Thank you, Mr. Chairman.

The CHAIRMAN. Are there other questions?

[No response.]

The CHAIRMAN. If not, this witness is excused and the House—or the Respondent may call their next witness.

Thank you very much for your testimony, Mr. Rico.

Mr. ANDERSON. The Respondent will call Glenn Whittle.

The CHAIRMAN. Mr. Whittle, would you raise your right hand, please?

Do you, Glenn Whittle, swear and affirm that the evidence you shall give in the case now pending between the United States and Judge Alcee L. Hastings shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. WHITTLE. I do.

The CHAIRMAN. Please be seated.

Mr. WHITTLE. Thank you.

TESTIMONY OF GLENN A. WHITTLE

DIRECT EXAMINATION

Mr. ANDERSON. Mr. Whittle, I think you'll have to lean into the microphone so the committee can hear you.

Would you tell the committee your full name?

Mr. WHITTLE. Glenn A. Whittle.

Mr. ANDERSON. Mr. Whittle, where do you reside?

Mr. WHITTLE. At 1420 Southwest 82nd Avenue, Miami, Florida.

Mr. ANDERSON. And how long have you resided in Miami?

Mr. WHITTLE. Since 1950.

Mr. ANDERSON. What is your—are you employed?

Mr. WHITTLE. Yes. I'm a life insurance broker.

Mr. ANDERSON. And how long have you been a life insurance broker?

Mr. WHITTLE. Since 1952.

Mr. ANDERSON. Do you know Steve Clark?

Mr. WHITTLE. Yes.

Mr. ANDERSON. How long have you known him?

Mr. WHITTLE. About 30 years.

Mr. ANDERSON. And are you one of the mayor's golfing partners?

Mr. WHITTLE. Yes, I am.

Mr. ANDERSON. And in 1985 were you a member of one of his regular golf foursomes.

Mr. WHITTLE. Yes, I was.

Mr. ANDERSON. Who were the other members of that golf foursome in 1985?

Mr. WHITTLE. We had different members of our foursome, but mostly it was Tony Amoroso, Jerry Forrester, and myself.

Mr. ANDERSON. And how often did the four of you get together to play golf?

Mr. WHITTLE. Twice a week.

Mr. ANDERSON. And how long had that been going—this was, I take it, I'm asking you now about 1985, at that time how long had this golf foursome been in existence?

Mr. WHITTLE. Ten, 15 years.

Mr. ANDERSON. Now, do you also know Peter Ferguson?

Mr. WHITTLE. Yes, I do.

Mr. ANDERSON. How did you come to know him?

Mr. WHITTLE. We were in the insurance business together.

Mr. ANDERSON. And how long had you known him at this time?

Mr. WHITTLE. For 25 years.

Mr. ANDERSON. Was he a member of your golf foursome?

Mr. WHITTLE. Yes, he was.

Mr. ANDERSON. And there's been some evidence introduced, that Mr. Ferguson—in fact, it's been stipulated that Mr. Ferguson had served as Mayor Clark's campaign manager in various of his campaigns. Were you involved in the mayor's political campaigns?

Mr. WHITTLE. Always. Yes.

Mr. ANDERSON. So you're a political supporter of the mayor?

Mr. WHITTLE. Yes. Greatest mayor we ever had.

Mr. **Anderson**. By some recollection, he's the only mayor you've ever had.

Did you know Tom Dowd?

Mr. **Whittle**. Yes, I do.

Mr. **Anderson**. And how did you happen to meet Tom Dowd?

Mr. **Whittle**. On a golf course, Fontainebleau.

Mr. **Anderson**. And do you recall how long ago that was?

Mr. **Whittle**. About 14, 15 years.

Mr. **Anderson**. Did you call Tom Dowd in July, 1985 concerning Mayor Clark and Peter Ferguson?

Mr. **Whittle**. I don't recall making that phone call, but I possibly could have. I've heard it over and over so many times here and read all the books and statements on it. I possibly could have.

Mr. **Anderson**. All right. Do you have an independent recollection today as to whether you did make that call? I mean, do you remember one way or the other?

Mr. **Whittle**. I really honestly don't remember. But I possibly could have.

Mr. **Anderson**. Do you recall whether you had had a conversation with—do you know Paul Rico?

Mr. **Whittle**. Yes, very well. He's a golfing partner too.

Mr. **Anderson**. Do you recall whether you had had a conversation in sometime around July 1985 with Paul Rico concerning Mayor Clark and Peter Ferguson?

Mr. **Whittle**. No, I don't really recall talking about Mayor Clark and Peter Ferguson, but I, once again, I possibly could.

Mr. **Anderson**. Do you recall whether Paul Rico suggested you call Tom Dowd?

Mr. **Whittle**. No, I don't recall it.

Mr. **Anderson**. I know you've been spoken with several times. Do you recall the first time that someone approached you to ask you questions similar to those that I'm asking you now? Do you recall when that was?

Mr. **Whittle**. Somebody called me. I believe we went over it, and I think it was from Atlanta.

Mr. **Anderson**. OK.

Mr. **Whittle**. And they asked if I called Tom Dowd, and at the time I said I didn't recall.

Mr. **Anderson**. And do you recall if they told you why they were asking those questions at that time?

Mr. **Whittle**. No, I don't.

Mr. **Anderson**. Did the person calling you to identify himself or did he——

Mr. **Whittle**. Yes. Yes, he did. But I forgot the name.

Mr. **Anderson**. If I gave you two names, might you recall who it was? Let me try. Was it a man named Bernard Taylor or Sidney Smith?

Mr. **Whittle**. I think it was—I think it was Taylor. I think we—I think I recall Taylor upstairs, right.

Mr. **Anderson**. OK. And did they tell you why they were making that call, why they were interested in this particular bit of information?

Mr. **Whittle**. Now, from the newspapers and what I hear in Miami it got to be concerning the Hastings trial.

Mr. ANDERSON. And what was the next—were you again asked about this matter?

Mr. WHITTLE. Yes. Several reporters would call up every once in a while and ask.

Mr. ANDERSON. Now, prior to Mr. Taylor's call, had you ever been inquired about whether or not you had called Tom Dowd?

Mr. WHITTLE. No, I don't believe so.

Mr. ANDERSON. No one had ever asked you?

Mr. WHITTLE. I don't believe so. I don't believe so.

Mr. ANDERSON. And do you and the mayor still play golf?

Mr. WHITTLE. No. I need a new hip and he's got a physical ailment too. We haven't played in about two years.

Mr. ANDERSON. Until two years ago, were Agent Amoroso and Agent Forrester members of your foursome?

Mr. WHITTLE. Yes.

Mr. ANDERSON. I have no further questions of this witness.

The CHAIRMAN. Is there cross-examination of this witness?

Mr. GEKAS. We have no questions, Mr. Chairman.

EXAMINATION BY THE COMMITTEE

The CHAIRMAN. Mr. Whittle—we're looking for a memo that I wanted to refer to, Mr. Whittle.

Mr. Whittle, we have this memo from Tom Dowd to the special agent in charge in Miami dated the 24th of July of 1985 where he refers to a phone call, Mr. Dowd refers to a phone call he received from you, and it says in there that he's known you as Wedge. I guess that's a golfing term.

Mr. WHITTLE. Yes, sir.

The CHAIRMAN. And then he indicates that you said, it says, Whittle stated that he had received information about an FBI investigation into activities of Steve Clark and Peter Ferguson, that Whittle stated that he had received this information from your wife's boss, which we have testimony that that's—his wife's boss was Mr. Rico.

Do you recall the telephone call that you made to Mr. Dowd asking him about that investigation of Steve Clark and Peter Ferguson?

Mr. WHITTLE. I don't recall making it at the time, but going over it here and reading that memo upstairs, it comes back to me.

The CHAIRMAN. So you do believe you made the telephone conversation?

Mr. WHITTLE. I do believe I made it.

The CHAIRMAN. And you do also recall having been told about that investigation by Mr. Rico?

Mr. WHITTLE. No.

The CHAIRMAN. Who did—do you recall who did tell you about the fact that Steve Clark and Mr. Ferguson, or the allegation that Steve Clark and Peter Ferguson were being investigated?

Mr. WHITTLE. I read that in the Miami Herald.

The CHAIRMAN. So you did not—you don't recall having heard that from any individual? You just——

Mr. WHITTLE. I believe I read that in the Miami Herald, right.

The CHAIRMAN. And you believe that by this date, the 24th of July when you made the call to Tom Dowd there was— that information had come out in the Miami Herald. Is that correct?

Mr. WHITTLE. I think so, yes, sir.

The CHAIRMAN. Do you recall what prompted you to make the call? Did anybody ask you to make the call? I mean, is this the kind of thing that you would do just normally when you go through the paper in the morning if something looks—why Dowd? Why did you call Dowd?

Mr. WHITTLE. I don't recall. Actually, that's what's the tough part about it. I would have probably asked Tony Amoroso or——

The CHAIRMAN. Before you would have asked Dowd?

Mr. WHITTLE. Right, or Jerry Forrester, because they were in our foursome. That is why I don't recall making that phone call. So I say I could have, but I don't recall doing it.

The CHAIRMAN. So you don't recall making it for sure, and you certainly don't recall what would have prompted you to?

Mr. WHITTLE. What would have prompted me would be, probably, to protect my mayor. I wouldn't want anything to happen to him.

The CHAIRMAN. So, do you know if you visited with the mayor about this at the time? Do you know if he was aware that he was under investigation? If it was in the paper, I guess he must have been. Do you know if you ever mentioned it to him when you were playing golf or otherwise? You know, what is this about this investigation of you that I keep reading about, did you ever have a conversation like that?

Mr. WHITTLE. We have discussed the Hastings trial several times, but I don't recall when it was.

The CHAIRMAN. You don't recall discussing an investigation of the mayor, as distinct from the Hastings trial, with the mayor?

Mr. WHITTLE. No.

The CHAIRMAN. Senator Specter?

The VICE CHAIRMAN. Thank you, Mr. Chairman.

Would it make a difference in your testimony if you were told that the memo from Special Agent Dowd, dated July 23, 1985, and the first newspaper account was March 27, 1986?

Mr. WHITTLE. I read the memo upstairs.

The VICE CHAIRMAN. Mr. Whittle, you are known as Wedge?

Mr. WHITTLE. Yes, sir. Nickname.

The VICE CHAIRMAN. Nickname. Mr. Whittle, the memo from Special Agent Dowd concerning what he purports is the conversation with you was July 23, 1985, and the first newspaper account, according to the information which we have, was not until March 27, 1986.

So, if those dates are correct, you couldn't have read about it in the newspapers as the basis for a call to Special Agent Dowd?

Mr. WHITTLE. That is true. I don't know where I heard it from then, if I hard it.

The VICE CHAIRMAN. Well, could you have heard it from Mr. Rico?

Mr. WHITTLE. I don't believe I could have.

The VICE CHAIRMAN. Is there any possibility that you asked any other Special Agent, like Special Agent Forrester? Special Agent Amoroso?

You are nodding no.

Mr. WHITTLE. I am nodding no. I don't believe I did that. I can't recall that.

The VICE CHAIRMAN. Mr. Whittle, there is a memorandum in the House file which says that on January 25, 1988, a call was placed to an individual identifying himself as Mr. Glenn Whittle at phone number 264-5594. Is that your number?

Mr. WHITTLE. Yes, it is.

The VICE CHAIRMAN. To discuss his inquiry to Agent Dowd as detailed in Agent Dowd's memorandum of July 24, 1985. After identifying the purpose of the telephone call to Mr. Whittle, he denied ever making the initial inquiry to Agent Dowd. Now this is a long time ago, but on that memorandum you have reported to have denied making the call. On your first testimony here today, I wrote down what you said, you said you "don't remember." "Possibly could have made the call." Then later you testified, "It came back to me. I do believe I made it."

Mr. Whittle, do you really know what happened here?

Mr. WHITTLE. I guess I made the call.

The VICE CHAIRMAN. Why do you guess that?

Mr. WHITTLE. Because you have got a memo, and I read it upstairs. And I don't recall making a memo—I mean, making the call.

The VICE CHAIRMAN. But there is a possibility that you might have made the call, and if you made the call, you made the call to protect your mayor?

Mr. WHITTLE. That would be my reason for it, yes. To find out what is going on.

The VICE CHAIRMAN. And the call could have been made as early as July 1985?

Mr. WHITTLE. I'm not sure.

The VICE CHAIRMAN. You're not sure when you made the call or if you made the call?

Mr. WHITTLE. If I made the call; yes, sir.

The VICE CHAIRMAN. You are not sure when you made the call or if you made the call?

Mr. WHITTLE. Right.

The VICE CHAIRMAN. Or who prompted you to make the call?

Mr. WHITTLE. Yes, sir.

The VICE CHAIRMAN. OK. Thank you very much.

The CHAIRMAN. Are there other questions? Senator Pryor?

Senator PRYOR. Yes. Did you have a practice during that period of just picking up the telephone and calling the Federal Bureau of Investigation and asking them who was under investigation at the time?

Mr. WHITTLE. No, sir.

Senator PRYOR. How many times had you called Mr. Dowd before this particular call, if in fact the call was made, and we assume it was? Did you call him many times?

Mr. WHITTLE. No, sir. If I called—I have never made a call.

Senator PRYOR. Did you call any other FBI representative or agent to ask them about——

Mr. WHITTLE. FBI business?

Senator PRYOR [continuing]. Another investigation?

Mr. WHITTLE. No, sir. Never did.

Senator PRYOR. Did you feel that you had the closeness of relationship or communion with the Federal Bureau of Investigation to ask them a question of this nature? Were you that close to them?

Mr. WHITTLE. I don't believe so. No, sir.

Senator PRYOR. Did Mr. Amoroso ever talk to you about the mayor and his troubles?

Mr. WHITTLE. The mayor and his troubles? No, sir.

Senator PRYOR. Or possible troubles?

Mr. WHITTLE. No, sir.

Senator PRYOR. Did the other agent, Mr. Forrester, your golfing friend, did he ever talk to you about the possibility of the mayor being in trouble or under investigation?

Mr. WHITTLE. No, sir.

Senator PRYOR. Are you telling us you don't know why or what motive you had in making this call to the FBI?

Mr. WHITTLE. No, sir.

Senator PRYOR. You don't know why you made it?

Mr. WHITTLE. To find out if he was being investigated, according to the memo.

Senator PRYOR. Thank you, sir.

The CHAIRMAN. Are there other questions? Senator Rudman?

Senator RUDMAN. Just two for Mr. Whittle.

Mr. Whittle, you don't have any independent recollection, you don't remember making the phone call to Tom Dowd. But since you have been shown a memoranda that Mr. Dowd wrote, then you have testified that you, having read that, assume that you made the call?

Mr. WHITTLE. Yes, sir.

Senator RUDMAN. OK, let's go to the last part of it then.

You know Dowd pretty well?

Mr. WHITTLE. I think I know him. Sure.

Senator RUDMAN. Played golf with him, trust him?

Mr. WHITTLE. Yes.

Senator RUDMAN. Consider him a good friend?

Mr. WHITTLE. Consider him being married—helped him get married.

Senator RUDMAN. He certainly would have no reason to try to hurt you?

Mr. WHITTLE. No.

Senator RUDMAN. Well, you don't remember the phone call but you say if Tom Dowd says you made it you probably made it; right?

Mr. WHITTLE. I guess so, according to the memo.

Senator RUDMAN. OK. Tom Dowd also says that you said, "Your wife's boss is a kidder," referring to Mr. Rico. Do you believe that? Do you believe you said it if Tom Dowd says you said it?

Mr. WHITTLE. That part, I don't recall saying that.

Senator RUDMAN. Well, you don't recall making the phone call either, Mr. Whittle, but you say——

Mr. WHITTLE. I know. But I don't recall saying that part.

Senator RUDMAN. Well, I know. But you don't recall making the phone call, do you?

Mr. WHITTLE. That is true.

Senator RUDMAN. But you said, if Tom Dowd says you made the phone call in this written memo to the FBI, then you probably made it; right?

Mr. WHITTLE. It probably could be.

Senator RUDMAN. Then you probably said what you said if he says you said it, didn't you?

Mr. WHITTLE. I guess so.

Senator RUDMAN. Mr. Whittle, this has some humorous sides to it, but it is not very funny for Judge Hastings.

Mr. WHITTLE. I know it isn't.

Senator RUDMAN. The wiretap we are talking about started to happen about the 15th of July 1985, and this call, which I believe you made because I believe Agent Dowd's memorandum was made nine days after that started—I just want to ask you this question, having that in mind.

Would you have made—knowing how you act in life, would you have made that kind of a call to Tom Dowd unless someone had told you that Mr. Ferguson and the mayor were under investigation?

Mr. WHITTLE. I don't really realize why I made the phone call, if I made the phone call.

Senator RUDMAN. Now let me ask it again, Mr. Whittle. I am going back now four or five years. You pick up a telephone, you call an agent at FBI headquarters in Miami, you ask that agent whether or not your friend the mayor is under investigation. You say that if Tom Dowd said it, then you probably did it.

My question is this: Would you have ever done that, knowing how you think and how you operate in life, unless somewhere, somehow someone had told you that they were in fact under investigation?

Mr. WHITTLE. I don't think I would have.

Senator RUDMAN. So you would have had to have been told by someone?

Mr. WHITTLE. Or read it.

Senator RUDMAN. Well, you couldn't have read it. We have established that. That was not in any newspaper at that time. We have established that.

Mr. WHITTLE. If I made the phone call.

Senator RUDMAN. We believe you did make the phone call because we believe Agent Dowd's memoranda. And there was another agent in the room when he returned the call, so the evidence is overwhelming that you made it.

You wouldn't make this call as a prank, would you?

Mr. WHITTLE. No.

Senator RUDMAN. You wouldn't call up an FBI agent and joke with him——

Mr. WHITTLE. No, sir.

Senator RUDMAN [continuing]. About somebody being under investigation?

Mr. WHITTLE. No, sir.

Senator RUDMAN. So, understanding that all of us have memories that, you know, vary and, after all, this is a number of years ago, we are not being critical of that, Mr. Whittle. Since we have to try to understand in this committee what happened, it is probably fair for us to assume, if we believe you made the phone call, and most of us do, that something prompted you to make that phone call, and it was probably some information about Mayor Clark and Ferguson. Is that right?

Mr. **Whittle**. I guess it had to be. I either heard it or read it, as I said.

Senator **Rudman**. That is very important, Mr. Whittle, because, you see, at the time that you did that, that is the only evidence we have that somebody was talking about this investigation. We don't know who and probably never will.

But you wouldn't have called up Agent Dowd just to have a little fun with him on that morning, would you?

Mr. **Whittle**. No, sir.

Senator **Rudman**. That wouldn't be much fun, if you got in trouble with the FBI.

Mr. **Whittle**. I don't think this whole situation is fun.

Senator **Rudman**. No, it sure isn't, Mr. Whittle. Thank you very much.

The **Chairman**. Are there other questions from members of the committee? Senator Bryan?

Senator **Bryan**. Mr. Whittle, you are a strong defender of the mayor. I believe you made a statement to the effect, the best mayor we ever had, or words to that effect. I presume with your great support of the mayor that people in your part of the country know that Glenn Whittle is a fan and a supporter and an active—politically involved in the mayor's behalf. Would that be a fair conclusion for this committee to reach?

Mr. **Whittle**. Yes, sir. And he is a client of mine, too.

Senator **Bryan**. Client of yours. But the public generally knows that. People in the area know that Glenn Whittle and Steve Clark are old buddies and Glenn Whittle is a great political supporter?

Mr. **Whittle**. Thirty years. Yes, sir.

Senator **Bryan**. Do you have any business associations? Do you write any policies at all for any people that work in the Federal Building in Miami?

Mr. **Bryant**. Mr. Chairman, if you will please pardon this interruption. We are past a second bell on a vote. We would be pleased to let this continue with our counsel present while we go and vote.

And I would like to inform the chairman, we have seven votes in a row after this one.

The **Chairman**. Why don't we take that generous offer and go ahead and complete the questioning of this witness, and then we would recess until nine tomorrow morning after that. And the House managers are excused to go vote at this time.

Mr. **Bryant**. Thank you.

The **Chairman**. And, if their counsel will remain, we will go ahead and complete the questioning.

Senator Bryan?

Mr. **Gekas**. Mr. Chairman, may I interrupt one moment more?

The **Chairman**. Yes. Representative Gekas?

Mr. **Gekas**. Pursuant to the questions that were asked by Senator Specter and then by Senator Rudman, we think that there may be a misconception on the part of the Senate as to the existence of certain newspaper articles. Perhaps it would be prudent to allow us to cross-examine in view of those questions.

The CHAIRMAN. Do you wish to keep the witness overnight?

Mr. GEKAS. Well, I don't.

The CHAIRMAN. Is there any other witness that you can introduce that testimony with? Can your counsel proceed with him?

Mr. GEKAS. I just wanted to represent the Chair now that the questions raised by Senators Specter and Rudman prompts this inquiry.

The CHAIRMAN. We will count on your counsel to make whatever points need to be made.

Senator Bryan?

Senator BRYAN. Thank you, Mr. Chairman.

Mr. Whittle, we were discussing your business and business contacts, and the question that I had asked before the House managers had to leave to take a vote is whether or not you had any business associations with people who worked in the Federal Building?

Mr. WHITTLE. No, sir.

Senator BRYAN. You don't write any policies for people that work in the Federal Building there in Miami or have any——

Mr. WHITTLE. No, sir.

Senator BRYAN [continuing]. Business association with them?

Mr. WHITTLE. No, sir, I do not.

Senator BRYAN. Do you have any personal friends that work in the Federal courthouse, and specifically any friends that work in or about the chambers of Judge Hastings?

Mr. WHITTLE. No, sir.

Senator BRYAN. So it would be fair for us to conclude that you don't have any business relationship, any personal friends or contact with people that work in the Federal courthouse where Judge Hastings' chambers are located?

Mr. WHITTLE. No, sir.

Senator BRYAN. Can you try to reconstruct over these many years, based upon your many, many years in the community and, obviously, a man who is involved politically, how this information might have come to your attention? We are making the assumption now that you made the call and the call said, in effect, what the agent's memo said that it contains. How might this information have come to you?

Mr. WHITTLE. That prompted me to make the call?

Senator BRYAN. Yes, that prompted you to make the call.

Mr. WHITTLE. OK. You got me convinced I made the call.

Senator BRYAN. Let's make that assumption for the purpose of our discussion, all right?

Mr. WHITTLE. OK.

Senator BRYAN. You made the call and it says what the agent claims to have heard from you.

Mr. WHITTLE. Out in the field selling life insurance, socializing, playing golf, I probably could have heard this. Picked it up on the 19th Hole, they are investigating your friend, and I went to the phone. That is probably how it could have happened.

Senator BRYAN. And because of your involvement and your network of friends, you might have picked this information up?

Mr. WHITTLE. Yes, sir,

Senator **Bryan**. And because of your strong support of the major, you would want to find out whether that was true or not, with the motivation of alerting your friend if indeed it was.

Mr. **Whittle**. That motivated. That motivated; yes, sir.

Senator **Bryan**. My question now is, based upon this network that you have built up over the years, is there an individual, one or two or three, that is, based upon your own experience, historically well connected and who shares information about what is happening in the community that your good friend, the mayor, ought to know about from his good friend, you?

Have I got you confused, Mr. Whittle?

Mr. **Whittle**. There is a lot of people that protected Steve Clark. One of them is his public relations man that he hired, John McDermott. There is Pete Ferguson.

Senator **Bryan**. Could you have heard this information from these three gentlemen that you have just mentioned?

Mr. **Whittle**. Possibly could have.

Senator **Bryan**. Well, let me try to narrow the focus of the question.

Is there an individual or two that you have relied upon for information insofar as what is happening in the courthouse, what is happening with respect to any activities that the mayor is involved in, that you found sufficiently reliable that when you get this kind of information from this individual that you check it out because it may very well be accurate based upon your prior experience?

Mr. **Whittle**. I would ask John McDermott, his chief aide, or I would ask Pete Ferguson.

Senator **Bryan**. My question, and I don't want to keep beating this horse. But my question is, is there a source of information that you have generally that you have come to rely upon when it relates to allegations about the mayor? Anybody in the community that you are particularly close with who would call you from time to time and say, "Look. I've heard this. You may want to check it out, Glenn"?

And maybe the answer is no. We are just trying to find out how you might have picked up this information.

Mr. **Whittle**. Nobody would call me. I doubt it.

Senator **Bryan**. Thank you, Mr. Chairman.

The **Chairman**. Senator Lieberman?

Senator **Lieberman**. Mr. Whittle, I want to return very briefly to the golf course again. You have indicated that you were part of a regular foursome with Mayor Clark, Anthony Amoroso, Jerry Forrester; is that correct?

Mr. **Whittle**. That is right, sir.

Senator **Lieberman**. And that you played, in that period of time around 1985, generally about two times a week; correct?

Mr. **Whittle**. Correct.

Senator **Lieberman**. Were there regular days on which you played, certain days of the week?

Mr. **Whittle**. Saturday and Sunday, when the agents were off.

Senator **Lieberman**. When the FBI agents were off.

Mr. **Whittle**. Yes, sir.

Senator **Lieberman**. So to the best of your recollection, you would never play during the week?

Mr. WHITTLE. Yes, sir.

Senator LIEBERMAN. OK. No further questions. Thank you, Mr. Chairman.

The CHAIRMAN. Are there other questions from the committee?

[No response.]

The CHAIRMAN. Let me just ask one other, and then I gather counsel will have a question or two to ask also.

You indicated earlier that you don't remember ever having asked the mayor or alerted the mayor that in fact you had heard that he was under investigation. Do you remember any conversation like that where you might have said, "This is a problem for you, this investigation that they are doing"? Do you recall any conversation like that with the mayor?

Mr. WHITTLE. No. Because I didn't talk to him about it until it came out in the newspaper.

The CHAIRMAN. Right. Did you ever talk to Peter Ferguson about any such thing? Did you ever——

Mr. WHITTLE. I might have talked to Pete, asked him what is happening.

The CHAIRMAN. So that is a possibility. If, in fact, you made the phone call to Dowd and said, "Are the mayor and Pete Ferguson being investigated?" and Dowd said, "I can't tell you either way, yes or no," would it be likely you would have gone the next step and at least talked to Ferguson, and said, "What's going on?"

Mr. WHITTLE. I could have possibly talked to Ferguson; yes.

The CHAIRMAN. So you think maybe you did that but you don't recall?

Mr. WHITTLE. I don't recall; no, sir.

The CHAIRMAN. All right. Do counsel—I gather that Mr. Baron does have a question. Go ahead.

Is there redirect first? I think the orderly way, if there is——

Mr. ANDERSON. Just one question to clarify.

The CHAIRMAN. Why don't you ask your question first, Mr. Anderson, and then we will ask Mr. Baron.

REDIRECT EXAMINATION

Mr. ANDERSON. Mr. Whittle, among your people did you know Kevin Gordon?

Mr. WHITTLE. Yes.

Mr. ANDERSON. And how long had you known him?

Mr. WHITTLE. About 15 to 20 years.

Mr. ANDERSON. And did he buy life insurance from you?

Mr. WHITTLE. He tried to. And I filled out the application, the company rejected him, and three weeks later he died.

Mr. ANDERSON. No further questions.

The CHAIRMAN. Mr. Baron?

FURTHER RECROSS EXAMINATION

Mr. BARON. Mr. Whittle, in response to a question from Senator Rudman at one point you indicated that you might have seen something in the newspapers. Do you recall testifying along those lines?

Mr. WHITTLE. Yes, sir.

Mr. BARON. Isn't it a fact that the City of Hialeah is within Dade County? Am I correct about that?

Mr. WHITTLE. It is one of the municipalities; yes, sir.

Mr. BARON. OK. And Mayor Clark is mayor of Dade County overall, is he not?

Mr. WHITTLE. Yes, sir. The mayor of all mayors.

Mr. BARON. Do you recall that in January and February of 1985 that the Miami Herald ran a large and long series of articles concerning, kind of an expose about corruption in the City of Hialeah?

Mr. WHITTLE. Yes, I do.

Mr. BARON. And do you recall seeing those articles?

Mr. WHITTLE. Yes, sir.

Mr. BARON. And do you recall that there were additional articles in the press thereafter about what had been a massive story about corruption in Hialeah regarding zoning and things of that type?

Mr. WHITTLE. Right.

Mr. BARON. Might that have been a part of what motivated you to make the call that you think you might have made?

Mr. WHITTLE. No question about it. They really slammed him, the Miami Herald, this great corrupter.

Mr. BARON. Do you recall whether——

Mr. WHITTLE. Told a lot of falsehoods, which he later proved to be wrong, erroneous.

Mr. BARON. You are talking about falsehoods about what was going on in Hialeah?

Mr. WHITTLE. About the mayor.

Mr. BARON. Oh. About the mayor?

Mr. WHITTLE. About the mayor, right.

Mr. BARON. OK. I have nothing further.

Senator RUDMAN. Is counsel going to give us some sort of exhibits or something?

Mr. BARON. Well, we hadn't anticipated this coming up. We have the articles about the corruption. These large stories in the Miami Herald are reproduced in an appendix to the House report so, in effect, they are available. But we will put them in a format that will be more accessible.

Senator RUDMAN. Counsel represents that the mayor in question figures prominently in these?

Mr. BARON. No, I am not representing that.

Senator RUDMAN. Well that is a very important question.

Mr. BARON. I am not representing that.

Senator RUDMAN. Because you got a very interesting answer. I mean, we are getting answers, Counsel, of the kind vagueness that even not this committee ought to listen to. Now what I want to know is, if this witness is not going back on his prior testimony, which I thought was fairly orderly, and saying conveniently that, Ah ha, that's why I asked the question of Tom Dowd. That's fine, if we can have evidence in front of us that this mayor's name was in the Miami Herald. If it wasn't, then I don't think the line of questioning is fair, Counsel.

Mr. BARON. Well, Senator, I am not suggesting that I know all of the Miami Herald articles. You asked me about the particular articles that I happen to have available to me, and I am not going to represent that Mayor Clark's name is in there.

He indicated that he had seen other articles involving Mayor Clark. I don't have those.

Senator RUDMAN. Counsel, this obviously is a linchpin of the case against Judge Hastings here, and I would request of the House now to produce for me any newspaper articles whatsoever from any media source prior to 23rd of July 1985 that mention the mayor by name with an inference of corruption.

If the House will do that, I would appreciate it. And then I would be able to properly assess the examination of this witness.

Mr. BARON. I think that is fair, Senator, and we will make efforts to do that.

The CHAIRMAN. Senator Leahy had an additional question.

FURTHER EXAMINATION BY THE COMMITTEE

Senator LEAHY. Mr. Chairman, I am sorry I had to step out momentarily at one part of the testimony. I want to make sure I understand it.

You said you played golf with Mayor Clark?

Mr. WHITTLE. Yes, sir.

Senator LEAHY. And do I understand your testimony is that while playing golf with Mayor Clark there were occasions when Judge Hastings' name would come up or there would be discussions about Judge Hastings?

Mr. WHITTLE. No, sir. Never.

Senator LEAHY. Well, let me ask you this. Did Judge Hastings' name ever come up while playing golf with Mayor Clark?

Mr. WHITTLE. Yes.

Senator LEAHY. And do you recall the nature of that discussion?

Mr. WHITTLE. I think it was during his first trial in Miami where he was acquitted. We were talking about that.

Senator LEAHY. And do you recall what Judge Clark said about the acquittal? I mean, what Mayor Clark said about the acquittal?

Mr. WHITTLE. I think he was happy about it. We all were.

Senator LEAHY. Do you recall any other discussions about Judge Hastings with Mayor Clark?

Mr. WHITTLE. No.

Senator LEAHY. But both you and Mayor Clark were pleased with the acquittal?

Mr. WHITTLE. Sure were.

Senator LEAHY. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Are there other questions from the committee?

[No response.]

The CHAIRMAN. If not——

Mr. ANDERSON. I am sorry. Senator Leahy has opened one more line and I would like to ask just one follow-up question. Sorry about that.

The CHAIRMAN. We will permit it.

Mr. ANDERSON. Mr. Whittle, I believe Agent Amoroso was also a member of the golf foursome?

Mr. WHITTLE. Yes, sir.

Mr. ANDERSON. Was he pleased also by Judge Hastings' acquittal?

Mr. WHITTLE. I didn't talk—discuss it with him.

Mr. Anderson. No further questions.

The Chairman. Mr. Baron, did you have any other questions, too?

Mr. Baron. In response to Senator Rudman's admonition, this was based on a very hurried response, Senator. I am trying to give you quick turnaround time. The House has Exhibit 191A in your books, which consist of a series of articles in the Miami Herald concerning corruption in Hialeah, and just on a quick look in trying to respond to your inquiry we find at least one reference to Mayor Clark, suggesting that certain developers who were engaged in corrupt activity in Hialeah had also paid, given a thousand dollars to Mayor Clark. So there is a reference even in these articles that we have immediately at hand.

Senator Rudman. A thousand dollar bribe? A thousand dollar campaign contribution?

Mr. Baron. A thousand dollar contribution.

The Chairman. What is the date of those articles?

Mr. Baron. The articles, this one is January 27, 1985, and I believe there is another one.

Senator Pryor. Did you say January 27th?

Mr. Baron. One is January 27th. Then there is a follow-up article January 28th. It was a series of articles in the nature of an expose of corruption.

Senator Rudman. Well, Counsel, I would just make a general comment to you that, number one, if it is a contribution that is a horse of a different color than what we are talking.

Secondly, I seriously question this witness' testimony about this article. That he would make a July call based on a January article.

Mr. Baron. I am not suggesting that. We will try to find out whether there are any additional articles. This was simply something we had at hand.

Senator Rudman. If there are articles contemporaneous with this witness' testimony, then I would like to see them, and it could change my view from what it is as of this moment today. I thank counsel for this cooperation.

The Chairman. Is there any reason Mr. Whittle should not be excused at this time as a witness?

[No response.]

The Chairman. Mr. Whittle, you are excused. We very much appreciate your testimony.

Mr. Whittle. Thank you very much.

The Chairman. The committee will recess now until nine tomorrow morning.

[Whereupon, at 5:15 p.m., the committee was adjourned, to reconvene on Wednesday, July 26, 1989, at 9:00 a.m.]

IMPEACHMENT OF JUDGE ALCEE L. HASTINGS

WEDNESDAY, JULY 26, 1989

U.S. SENATE,
IMPEACHMENT TRIAL COMMITTEE,
Washington, DC.

The committee met, pursuant to notice, at 9:20 a.m., in room SH-216, Hart Senate Office Building, Hon. Jeff Bingaman (chairman of the committee) presiding.

Present: Senators Bingaman, Specter, Leahy, Durenberger, Pryor, Rudman, Bryan, Bond, Kerrey, Gorton, Lieberman, and Burns.

House Managers present: Representatives Bryant, Conyers, Synar, Gekas, and Fish.

Counsel Present: Terence J. Anderson, counsel for Judge Hastings; Patricia Graham Williams, counsel for Judge Hastings; Robert S. Catz, counsel for Judge Hastings; Alan I. Baron, special counsel, House Impeachment Committee; Janice E. Cooper, Patricia Wynn, Lori E. Fields, assistant special counsel, House Impeachment Committee; Michael Davidson, Senate Legal Counsel; Elaine Stone, counsel, Senate Impeachment Trial Committee; Mark Klugheit, counsel, Senate Impeachment Trial Committee; and Bruce McBarnette, counsel, Senate Impeachment Trial Committee.

Staff Present: Anthony Harvey, administrator, Senate Impeachment Trial Committee; P. Casey McGannon, staff assistant, Senate Impeachment Trial Committee; and Isabel McVeigh, staff assistant, Senate Impeachment Trial Committee.

The CHAIRMAN. The committee will reconvene.

At this point, would counsel for respondent go ahead and call their next witness, please?

Mr. ANDERSON. The respondent would call Anthony Amoroso.

Mr. BRYANT. Mr. Chairman, could the House have just a couple of minutes to collect ourselves here? We still don't have all of our members back, and particularly the member who has been assigned the responsibility of Mr. Amoroso.

The CHAIRMAN. We'll hold off a couple of minutes. It will take a little while, of course, to get Mr. Amoroso in and sworn. Why don't we go ahead and do that?

[Pause.]

Mr. BRYANT. Mr. Chairman, perhaps the House could bring up another matter while we're waiting here. That's with regard to the list of exhibits that was tendered to us by the respondent.

We have reviewed the list of exhibits given to us yesterday. It had been represented to us that there was nothing new on this list which is why it's late in delivery, and the fact that no copies of the documents were provided were represented as not posing any problem. This representation is not accurate. We have never seen some of the documents listed by the respondent for use during his direct case, and it is clear from the titles of these documents that some may very well be used with witnesses respondent intends to call before the committee today.

In addition, at the end of respondent's list of exhibits, it states, has the words "More" in parentheses, implying by our reading that there is more to come. We would like to know what this means and, if there are to be additional documents, for them to be identified and provided.

I would point out, Mr. Chairman, we're now into the respondent's case. We'd like to ask that he again be directed to comply with past orders. And I might point out to you that it's apparent that even while the House was presenting its direct case, respondent, we allege, knew what exhibits he was going to use and even had them numbered already, in spite of his representations to this panel.

For example, the second to the last exhibit on his list is No. 133.

The CHAIRMAN. Do we have the list of respondent's exhibits? I have not seen it.

Mr. ANDERSON. We have a half dozen in draft form, Mr. Chairman. Mr. Bryant is quite correct it's not in final form.

Mr. BRYANT. The second to the last exhibit on the list is No. 133, and it was used by respondent during the examination of Donna Myrill, and the exhibit at that time was already numbered 133. It, therefore, would certainly—that was quite early in the case. It would certainly raise a question in our mind as to whether the representations that this list wasn't available were accurate.

We, again, would please ask the committee to instruct the respondent that he has to follow the rules, which he has not followed at all in spite of our repeated request that he be required to give us exhibits. If we're not provided with these exhibits, if the witness list continues to change, we'll have no alternative but to plead for a recess so that we can prepare our cross-examination of his witnesses.

Mr. ANDERSON. Mr. Chairman, may I respond briefly?

The CHAIRMAN. Yes. Go right ahead.

Mr. ANDERSON. First of all, Manager Bryant simply is wrong. We do not have—and this witness thing was constructed over the weekend. The reason for the 133 and 134 is simply that's how high we got over the weekend before I marked those two pieces of handwritten notes. If there are documents here that the managers are unaware of, other than curriculum vitae for witnesses which we're trying to get for the committee, I'm truly not aware of it. And if you'll tell me, I'll try and get them up. We are going as fast as we can on this. This document did not exist; the exhibits were not numbered. As fast as we can get them copied, we'll do it.

In terms of the witness list, the changes are basically as people fly in. Because of yesterday's session and late Wednesday afternoon by what my projections were, our order changing, we have dropped some witnesses off the list, but I'm not aware of significant additions. So I apologize for disorganization. We at the outset said we needed 30 days to put ourselves together. I realize we're 10 days into the trial, but we're 10 days also into the 30 days that I needed to get this stuff together. And we're working as fast as we can.

I apologize for the disorganization, but there's nothing I can do.

The **Chairman**. Let me ask the House managers, can you give us a list of those exhibits which you believe are new and are not information that you've previously had in your possession?

Mr. **Bryant**. Well, as a minimum, at first just looking it over briefly, No. 74 through 81 we've never seen before.

The **Chairman**. No. 74 through 81.

Mr. **Bryant**. Additionally, we would urge the committee to press this point. He used early in the case his own exhibit marked No. 133. If, indeed, he did not have this list of exhibits, how did he already have the exhibit marked No. 133?

Mr. **Anderson**. It was not marked, I think, when I showed it. I can't tell you whether it was or not, but I'll tell you what we did. We brought up two-hundred little stick-um things numbered 1 through whatever, and we've been pulling them off and putting them on documents as they come up.

The **Chairman**. Counsel, is there any reason why Exhibits 74 through 81—I believe those are the numbers that you identified—could not be turned over to House counsel at this time?

Mr. **Anderson**. None whatsoever, no. They were produced—I assume copies have been sent. They were produced by the executive director of the NBA. Some of them were used at Judge Hastings' trial.

The **Chairman**. How do we get those physically in the possession of House managers?

Mr. **Anderson**. Mr. Bishop will undertake to do that within the next couple of minutes.

The **Chairman**. OK. If there are any other exhibits that you do not have copies of or do not have in your possession, we would direct at this time that those be made available to you immediately. Anything that you do not have that is to be offered as an exhibit, you should have a copy of.

Mr. **Bryant**. We received it late in the day. We'll continue to look at it. If there are others that we don't have copies of, we'll raise that with the committee or with respondent.

The **Chairman**. Raise it with respondent first. If you cannot obtain copies, then bring it to the committee's attention. But there's no reason why you shouldn't have copies of all respondent's exhibits at this point.

Let me say this: With regard to this exhibit list, we feel that we have been had. But with regard to this witness matter, we don't necessarily impute any ill will on their part, but we simply can't manage the situation if he's going to be changing it so rapidly.

Mr. **Anderson**. Again, Mr. Chairman, if I may briefly?

The **Chairman**. Mr. Anderson.

Mr. **Anderson**. I think I confronted similar difficulties. I recognize that the managers have six Representatives to orchestrate, and there's very few of us so the orchestration problem isn't there. The only change I'm aware of today is Dr. Phillips, who happened to be at the MMAP conference, flew in and so we're putting him on. I have told the managers, because Mrs. Pearl Dabreau Mapp is a DC person, I would like to, I may put her at the end of our list today depending on the timing, simply so that out-of-town witness can get on and get out. But I——

The **Chairman**. According to the list that was submitted to us, Mr. Ferguson was to be your next witness.

Mr. **Anderson**. I've released him. I've decided——

The **Chairman**. He is not to be called?

Mr. **Anderson**. He is not to be called at all.

The **Chairman**. What about Mr. Silvio Cardoso?

Mr. **Anderson**. I have decided he should not be called.

The **Chairman**. Neither of those witnesses will be called.

Now, Dr. Roy Phillips will be called?

Mr. **Anderson**. He will be called, yes.

The **Chairman**. OK. And when do you expect to do that?

Mr. **Anderson**. My order of witnesses today which I have given is we have Mr. Gunn has flown in from out of town, and so we're going to put him up. We can make him fit. Anthony Amoroso, James Gunn, Dr. Phillips, the major witness for the day will be Jesse McCrary. We have the Dabreau sisters who were at the hotel. Depending on how far in the afternoon, we will call them today if that's possible. Ms. McIver and Ms. Golar-Williams, who were originally House witnesses, have flown back in from out of town, and Judge Latimer who's going on vacation has flown in. They're all on our witness list. They are all relatively brief witnesses, and we would like not to hold them if we can avoid that. That is our order of the day.

The **Chairman**. Let me be sure I've got that, again, now. Mr. Amoroso would be first. Doctor——

Mr. **Anderson**. James Gunn will be second.

The **Chairman**. Dr. Gunn.

Mr. **Anderson**. James Gunn.

The **Chairman**. James Gunn, then Dr. Phillips.

Mr. **Anderson**. Yes, sir.

The **Chairman**. Then Jesse McCrary.

Mr. **Anderson**. Jesse McCrary.

The **Chairman**. Then Pearl Dabreau Mapp.

Mr. **Anderson**. No. At that point, it depends on where we are in the afternoon. Pearl Dabreau Mapp is a Washington resident. If we move as rapidly as we did yesterday, I would call them in that order simply because they relate to Mr. McCrary's testimony. If we are pushing into the afternoon, I would like to get the last three witnesses ahead of them simply so they can leave town and get about with their business.

The **Chairman**. So you may or may not call them at that point depending upon the timing. You would plan to call today Judge Latimer, Carolyn McIver, and Eleanor Golar-Williams?

Mr. **Anderson**. Yes, sir. They've all flown in, and I'd like to get them out if I can.

The **Chairman**. Well, that is substantially different than the listing that you've given us. I don't know that that prejudices the House. None of those witnesses—maybe some of those were not expected at this particular time in the procedure. But does the House object to that order and feel that they're put at an unreasonable disadvantage by virtue of that?

Mr. BRYANT. Mr. Chairman, our desire is to move ahead, like yours is. We're willing to try to manage this. We'd like to ask a little leeway in the event we have to ask for a few minutes. Our problem, of course, is that we have different members of the management team assigned to different witnesses. When they're jumbled like this and we don't learn about it until the morning, we're not always sure we can get everybody here at the right time. That's our problem.

We're willing to proceed with this, but we'd like for you to take it into consideration if we ask for a brief delay along the way.

The CHAIRMAN. We will do that. I think we've been very lenient both with the House managers and with respondent in trying to accommodate everybody's need to be everywhere, and we'll continue to try to do that.

I do think that if it's possible to provide House managers with your planned list of witnesses for tomorrow before the end of business today, their ability to schedule their time might be improved.

Mr. ANDERSON. Mr. Chairman, I did give them what we thought as of the end of the day yesterday the list of witnesses, and Dr. Phillips is, I think, the only addition; perhaps Mrs. Golar-Williams because we weren't certain they would get in. But the Amoroso-Gunn-McCrary who were up, that was provided.

Mr. BRYANT. Could we have a clarification on the ruling with regard to the exhibits? In spite of the fact that they were ordered a month ago to have these in, it says "More" at the bottom of the list.

The CHAIRMAN. Are there other exhibits that are planned to be used in the trial?

Mr. ANDERSON. I am still working through some of the papers that were provided. There is nothing in my head. The only "more" that I am aware of is as witnesses come in, in light of some concerns expressed by the staff, I'm asking where I can get the resumes. I could not today identify, apart from—I know I will—the "more" today will be Jesse McCrary's resume. I asked to have it fax'd up because there'd been some interest. Other than that, I can't identify for you in my head a document, but I am still engaged in document review.

The CHAIRMAN. But you do not anticipate at this time any other exhibits other than possible resumes of witnesses that you call?

Mr. ANDERSON. That is correct. And as soon as I identify them, I will——

The CHAIRMAN. Right, so that we have a complete list with that one exception as far as you are presently aware.

Mr. ANDERSON. As far as I am presently aware.

The CHAIRMAN. I think our direction and order is that all of those exhibits that are on the list be turned over to House counsel immediately for your review.

Are the House managers all here now? Can we proceed?

Mr. BRYANT. Yes.

The CHAIRMAN. If we could bring Mr. Amoroso in and go ahead with his testimony.

Mr. ANDERSON. Mr. Chairman, one additional point. The witnesses that I have called yesterday and my first two today are witnesses whom I believe, in a search for truth about the Article XVI, should be called. They are in the case of Agent Amoroso by virtue of position, I think, adverse witnesses, and the others are witnesses who have no relationship with Judge Hastings. I would ask that I be permitted to proceed as if on cross where necessary. I will not abuse the privilege.

The **Chairman**. We will permit that to a degree.

Mr. Amoroso, would you raise your right hand, please? Do you, Anthony Amoroso, swear and affirm that the evidence you shall give in the case now pending between the United States and Judge Alcee L. Hastings shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. **Amoroso**. I do.

The **Chairman**. Please be seated.

TESTIMONY OF ANTHONY AMOROSO

DIRECT EXAMINATION

Mr. **Anderson**. Agent Amoroso, or former Agent Amoroso, by whom are you now employed?

Mr. **Amoroso**. A private company in Miami called Penn Aviation.

Mr. **Anderson**. And were you prior to that an agent with the Federal Bureau of Investigation?

Mr. **Amoroso**. Yes. I was a supervisor when I retired.

Mr. **Anderson**. And when did you retire?

Mr. **Amoroso**. February of this year.

Mr. **Anderson**. Let me direct your attention to the period immediately preceding, the years preceding September 1985. At that time, did you know Stephen Clark, the mayor of Dade County?

Mr. **Amoroso**. Yes.

Mr. **Anderson**. When did you first meet him?

Mr. **Amoroso**. Originally, I met him probably the latter part of 1975.

Mr. **Anderson**. And, thereafter, did you play golf on a regular basis with the mayor?

Mr. **Amoroso**. Probably not until 1982. In 1982, to the best of my recollection.

Mr. **Anderson**. And from 1982 to 1985, were you a regular golfing partner?

Mr. **Amoroso**. Regular in the respect that probably three out of four Sundays every month I played golf with him.

Mr. **Anderson**. And did you also know Glenn Whittle?

Mr. **Amoroso**. Yes.

Mr. **Anderson**. Was he a member of the regular three out of four Sundays a month golf foursome?

Mr. **Amoroso**. Correct.

Mr. **Anderson**. And was Jerry Forrester also a member?

Mr. **Amoroso**. Yes.

Mr. **Anderson**. What was Mr. Forrester's position at that time?

Mr. **Amoroso**. Special agent.

Mr. **Anderson**. Now, in 1985, what were your duties in the Miami office?

Mr. **Amoroso**. I was a supervisor of the organized crime squad.

Mr. **Anderson**. And what were Mr. Forrester's duties?

Mr. AMOROSO. I believe at that time he was an agent assigned to the Bahamas road trip.

Mr. ANDERSON. And did there come a time when you were advised to stop playing golf with Mayor Clark on a regular basis?

Mr. AMOROSO. Yes.

Mr. ANDERSON. When did that occur, sir?

Mr. AMOROSO. Well, the best I could pin it down, it had to be, I would say, probably the end of August of 1985.

Mr. ANDERSON. And who instructed you on that?

Mr. AMOROSO. The special agent in charge, Corliss.

Mr. ANDERSON. Joe Corliss?

Mr. AMOROSO. Yes.

Mr. ANDERSON. And what did Mr. Corliss tell you his reasons why you should stop playing golf with Mayor Clark?

Mr. AMOROSO. Well, here, again, to the best of my recollection, it was that his name had surfaced in an investigation, and Mr. Corliss felt that for the image of the Bureau I should stop playing golf with him.

Mr. ANDERSON. You recall I interviewed you briefly the other evening.

Mr. AMOROSO. Uh-huh.

Mr. ANDERSON. Just to clarify, do you recall telling me then that Mr. Corliss told you the mayor was under investigation and that was the reason?

Mr. AMOROSO. No. He said his name had come up in an investigation and that for the image of the Bureau it would be better if I stopped playing golf with him.

Mr. ANDERSON. And what did you do? Did you agree with that?

Mr. AMOROSO. I discussed it with him. I told him—I said that I felt that if there was a position concerning the mayor that might be questionable, my stopping playing golf with him might be a position for him to develop some suspicion that something was wrong. But I was overruled. He said do it, I did it.

Mr. ANDERSON. And to your knowledge, were the same instructions given to Mr. Forrester?

Mr. AMOROSO. I believe so, but you'd have to ask Forrester that.

Mr. ANDERSON. And, therefore, I take it you did not play golf with the mayor and Glenn Whittle?

Mr. AMOROSO. No, but I—after all of this that we're here for came about, I think I played golf with him later on a couple of times.

Mr. ANDERSON. And did you cease playing golf with Mr. Whittle at that time also?

Mr. AMOROSO. Yes.

Mr. ANDERSON. Now, Agent Amoroso, you were also the supervising agent on Operation Apple Eye back in 1981, were you not?

Mr. AMOROSO. Yes.

Mr. ANDERSON. Mr. Chairman, there were a couple of exhibits that are on our list, telexes. I'd like to show them to the witness now.

The CHAIRMAN. You can do that.

Mr. ANDERSON. Mr. Amoroso, let me show you what have been marked Respondent's Exhibits 13 and 14 and ask if you can identify those.

Mr. AMOROSO. Yes.

Mr. ANDERSON. Can you tell the committee what Respondent's Exhibit No. 13 is?

Mr. AMOROSO. What would you like to know about this?

Mr. ANDERSON. Just explain to the committee what the document is.

Mr. AMOROSO. Oh. This is a teletype going from the Miami office to the FBI headquarters, attention Shaun Hilley, the supervisor at headquarters handling the investigation.

Mr. ANDERSON. And that's a telex dated September 2, 1981?

Mr. AMOROSO. Yes.

Mr. ANDERSON. You would have reviewed that telex in the course of your duties before it went to Washington; is that correct?

Mr. AMOROSO. No.

Mr. ANDERSON. You would not necessarily have reviewed it?

Mr. AMOROSO. If this—which it looks like the Miami copy, over here where it says "Approval," those are not my initial. They're William Murphy's.

To clarify that, Mr. Murphy was a relief supervisor for me along with other people. And if I wasn't in the office, he or one of the others would sign out communications.

Mr. ANDERSON. And you would have reviewed that document eventually at some point?

Mr. AMOROSO. At some point in time when I did a file review on the case, I would review it, see it.

Mr. ANDERSON. And you are familiar with—under FBI practice, do you have any doubt that that is a record kept in the Miami files of a telex sent to Washington on the date——

Mr. AMOROSO. Yes, I would say so. I see his initials. I see my initials later.

Mr. ANDERSON. I would move the admission of Respondent's Exhibit No. 13.

Mr. BRYANT. We would object to this exhibit being introduced through this witness. He has testified he did not author it; he did not read it ahead of time before it was sent; it was not brought up and used at the time Agent Murphy was here. We find no predicate whatsoever laid for the introduction of this exhibit at this time, nor has there been any offering as to its relevance.

The CHAIRMAN. Counsel, what is the reason that it's being offered? What is the relevance?

Mr. ANDERSON. The primary reason is on page 2, paragraph 4, it is a further report that Mr. Dredge had stated that he has reason to believe that William Borders is conducting similar business, as alleged in the caption matter, with an unnamed Federal appellate court judge in New Orleans, LA. The relevance to our view that Mr. Borders was engaged in scamming persons by representing he had the power to influence Federal judges, including judges other than Alcee Hastings, is clearly a crucial issue here. This has been identified by the supervising agent on the file as a record kept and a communication in the ordinary course, which he reviewed after the fact. He can identify it. I don't see why it doesn't simply come in as the record maintained in the ordinary course of the FBI's business.

Mr. **Bryant**. Mr. Chairman, if Agent Murphy were here, we would believe it would be quite correct to let it in because Agent Murphy would be able to explain its contents. This gentleman, this witness cannot explain its contents. And to offer it for the purposes which he stated would be completely wrong. It is procedurally incorrect. He's had these exhibits for a very long time. To offer it at the time that Mr. Murphy was here would have been correct.

Also, there's nothing in this with regard to scamming. I don't know where this word "scamming" comes from. It's an invention of the respondent. I assume—you haven't told us, Mr. Anderson, but I assume you're referring to Respondent's Exhibit No. 13. Is that correct?

Mr. **Anderson**. Yes, sir. Paragraph 4 on page 2, the predicate factor I'm looking for which has been at issue in this case since 1981 was the fact that Mr. Dredge, or at least the FBI reported to headquarters that Mr. Dredge had advised them Mr. Borders was engaging in at least one other judge.

Mr. **Bryant**. Well, I'll read it to you. I think we should read it directly to the panel here.

Mr. **Anderson**. I thought I just did.

Mr. **Bryant**. "He stated he has reason to believe that William Borders is conducting similar business as alleged in captioned matters with an unnamed Federal appellate court judge in New Orleans, Louisiana."

The House managers happen to know that William Murphy can explain that quite easily to this committee. Agent Amoroso cannot. This exhibit was in his possession. He could have brought it up at the time Agent Murphy was here and specifically chose not to do so.

The **Chairman**. Let me ask the witness: Are you familiar with the statements that are made in here? Are you in a position to testify to the committee about the truth of them or the basis for them, or are you not?

Mr. **Amoroso**. In total, no.

The **Chairman**. You're not?

Mr. **Amoroso**. No.

Mr. **Anderson**. May I ask two more questions of the witness to lay that predicate and then suggest that the House——

The **Chairman**. Why don't you ask your two other questions, and then we'll rule on the objections.

Mr. **Anderson**. Agent Murphy, you participated in the initial interviews and debriefing of William Dredge, did you not?

Mr. **Bryant**. I'd like to correct the record. This is not Agent Murphy.

Mr. **Anderson**. I'm sorry. I apologize. Agent Amoroso, you participated in the initial interviews and debriefing of William Dredge, did you not?

Mr. **Amoroso**. I believe I participated in the single initial interview with Dredge to determine what we were going to do, how we were going to handle the case. But I have not reviewed or seen that since that time.

Mr. **Anderson**. Well, I mean, you were the person, you did participate, you, Agent—I think it was Mary and Mr. Murphy were the three agents on the scene on the scene on that one, and all of you initialed——

Mr. AMOROSO. I don't know who the third—who was the third one?

Mr. ANDERSON. I would have to look back. It's an agent who has since retired, Agent Mary or something like that. He hasn't come in again.

Mr. AMOROSO. Welison Mary?

Mr. ANDERSON. Yes.

Mr. AMOROSO. That's a possibility. I don't recall. I know Murphy and I participated in the initial interview, feeling out of Dredge.

Mr. ANDERSON. You participated in the formulation of the undercover scenario that ultimately was approved and implemented?

Mr. AMOROSO. Yes.

Mr. ANDERSON. And you were the supervising agent on the investigation and in that capacity had supervisory responsibility for its conduct?

Mr. AMOROSO. Yes.

Mr. ANDERSON. Mr. Chairman, there is the opportunity for rebuttal if there is something that the House thinks we put in——

The CHAIRMAN. We will overrule the objection and admit the exhibit at this time.

Mr. BRYANT. Mr. Chairman, I don't wish to quarrel with the ruling here, but a fundamental part of the necessary showing is that this memorandum had something to do with the meeting he was asked about. That question wasn't asked. We know the answer to that question. Without that——

The CHAIRMAN. Counsel, if you don't want to argue with the ruling of the Chair, you shouldn't do so. If you would like to handle this on cross-examination, I think you can certainly bring out any point of view that you would like to at that time.

The exhibit has been introduced.

[The document referred to was marked Respondent's Exhibit No. 13 and was received in evidence.]

Mr. ANDERSON. Agent Amoroso, would you please tell the committee what Respondent's exhibit 14 is?

Mr. AMOROSO. This is another teletype dated August 28, 1981, going from Miami to the director's attention, Shaun Hilley again.

Mr. ANDERSON. And does that bear your initials also?

Mr. AMOROSO. No. The approving agent here, again, was Murphy. I initialed it later on, some time probably during a file review that I had seen it.

Mr. ANDERSON. Mr. Chairman, again, I understand Mr. Bryant's objection. I would move the admission of Respondent's 14 on the basis that this agent was the supervising agent. It is a record in the FBI file. If he wants a proffer as to relevance, I'd be happy to provide it.

Mr. BRYANT. That's what I wanted to ask for.

The CHAIRMAN. Let me ask the witness: Is this teletype that is being offered as exhibit 14, is this a teletype which you approved in your position as supervisor?

Mr. AMOROSO. If I was there, I would have signed it out. However, I was probably some place else doing something. Murphy, as the relief supervisor for me, had the authority to sign it out and send it out himself.

He did send it out. I saw it at some point in time later on.

Mr. **Anderson**. And you initialed it?

The **Chairman**. And indicated that on the document that you——

Mr. **Amoroso**. Yes, I initialed it. Down here in the lower right-hand corner. At some point in time later on, I saw it.

The **Chairman**. It will be admitted.

[The document referred to was marked Respondent's Exhibit No. 14 and was received in evidence.]

Mr. **Anderson**. Do you want the proffer as to relevance?

Mr. **Bryant**. May we have the relevance proffer?

The **Chairman**. Yes. Please go ahead with that.

Mr. **Anderson**. This is a memorandum, telex dated August 28th on its face. On page 6 in the third numbered paragraph on that page, it says, and I quote, "3. These same Strike Force attorneys have advised that they will try and have the judge removed from the case based on the evidence to date. Part of the deal between the judge and Trafficante is that the judge will advise Trafficante as to what type of motions that are to be filed that would cause him to rule favorably in Trafficante's favor. This information was supplied by Dredge."

I proffer that it bears upon the conduct of this investigation, that by August 28th, before the scenario had even been approved, Strike Force attorneys were ready to seek the removal of Judge Hastings for a case based on, as near as I can tell, solely upon what William Dredge had said.

The **Chairman**. Why don't you pursue that line of questioning with the witness, counsel? The exhibit has been admitted.

Mr. **Anderson**. Agent Amoroso, were you present at meetings with Strike Force attorneys concerning this matter?

Mr. **Amoroso**. I believe at some, not all.

Mr. **Anderson**. Were you present at meetings prior to August 28, 1988?

Mr. **Amoroso**. I can't say for sure.

Mr. **Anderson**. Is that because you don't recall?

Mr. **Amoroso**. I don't recall.

Mr. **Anderson**. As of August 28th, no scenario, undercover or otherwise, had been formally approved in this case, had it?

Mr. **Amoroso**. When you say approved, we had had a scenario set up already. Right from the minute SAC Corliss assigned the case to me, we had had a scenario.

Mr. **Anderson**. All right. And was that the scenario that was eventually implemented?

Mr. **Amoroso**. Yes.

Mr. **Anderson**. Roughly? It involved an undercover agent; it involved——

Mr. **Amoroso**. Yes, yes.

Mr. **Anderson**. Had the scenario itself been approved by Washington?

Mr. **Amoroso**. At some point in time it had. When, I don't know. There'd probably be some communication or something. It would probably be initially ~~with a~~ phone call, followed up by some kind of communication.

Mr. Anderson. But I take it, then, you don't recall whether it had been approved as of August 28th?

Mr. Amoroso. Not unless you give me the file and I look through it.

Mr. Anderson. Now, Agent Murphy, am I correct that a scenario involving an undercover operation that may involve the expenditure of FBI funds and the implication of a United States district judge is going to require approval from Washington?

Mr. Amoroso. Yes.

Mr. Anderson. Do you recall whether the first step in that undercover scenario had been implemented at this point in time?

Mr. Amoroso. The first step would have been initially to interview Dredge, start a case, get our strategy together, and then go from there. The Bureau would have been advised immediately, first by telephone, then by communication. You're asking me questions without giving me the file to look at to see. So I can't really answer it. I mean, I can tell you what procedure is.

Mr. Anderson. Well, you can tell us you don't recall at this point in time.

Mr. Amoroso. Well, I'm telling you what procedure is. I follow procedures. So the procedure would have been that I take those steps. I assume I did.

Mr. Anderson. Do you recall that the first step in the undercover, the first actual step was to have the informant introduce a former agent named Paul Rico posing as Frank Romano to William Borders at the Miami International Airport?

Mr. Amoroso. That would not have been the first step. The first step would be my getting Rico to participate in the thing.

Mr. Anderson. Let me then not number the steps. Do you recall your undercover scenario was designed to demonstrate—to generate some form of circumstantial evidence to determine whether Judge Hastings was implicated in this as well as Mr. Borders?

Mr. Amoroso. Sir, I don't understand what you mean by circumstantial evidence. We were trying to develop evidence, not circumstantial.

Mr. Anderson. All right. Do you recall that one aspect of your undercover scenario was to generate evidence from which we might determine whether——

Mr. Amoroso. Yes. That's the focus of all investigations, determine evidence.

Mr. Anderson. And do you recall that one step you were going to take to generate evidence was to have the informant introduce Mr. Rico posing as Frank Romano to William Borders with the agent wearing a NAGRA body recorder to see what happened then?

Mr. Amoroso. Yes. That's my recollection, yes.

Mr. Anderson. And that step came to pass and——

Mr. Amoroso. Correct.

Mr. Anderson [continuing]. There was some evidence against Mr. Borders generated?

Mr. Amoroso. I would say yes.

Mr. **Anderson**. And do you recall that one part of that was an agreement was reached between Mr. Rico posing as Frank Romano and that Mr. Borders would cause Judge Hastings to have dinner at the Fontainebleau Hotel. Is that correct?

Mr. **Amoroso**. Yes.

Mr. **Anderson**. Prior to the time Judge Hastings had dinner at the Fontainebleau Hotel, do you recall having in your possession any direct evidence showing that Judge Hastings was—indicating that Judge Hastings was in any way involved in anything improper?

Mr. **Amoroso**. Direct evidence I would assume would be, one, Borders—excuse me, would be first Dredge's statements; secondly, it would be what we solicited from Mr. Borders.

Mr. **Anderson**. But you did not have any conduct by Judge Hastings or any evidence of conduct by Judge Hastings prior to that dinner, did you, sir?

Mr. **Amoroso**. None that I knew about. I don't believe none that I knew about.

Mr. **Anderson**. And am I correct you do not—do you recall whether you were present at a meeting when the Strike Force attorneys some time on or prior to August 28th that they will try and have the judge removed from the case based on the evidence to date?

Mr. **Amoroso**. No, I don't recall being at specific meetings in conjunction with that case. I supervised 15 agents on 300 other cases, so I had to spread my time. And Murphy, a very capable agent, I left a lot of things to his discretion.

Mr. **Anderson**. Do you recall the subject of the Strike Force interest in getting Judge Hastings removed from the case being discussed in your presence at all?

Mr. **Amoroso**. Offhand, no.

Mr. **Anderson**. Offhand, no.

Now, when were you first assigned to Miami, Agent Amoroso?

Mr. **Amoroso**. Originally, 1972.

Mr. **Anderson**. And have you during the course of your career served in an undercover capacity?

Mr. **Amoroso**. Yes.

Mr. **Anderson**. And was one of the operations in which you were in an undercover capacity an operation known as Operation ABSCAM?

Mr. **Amoroso**. Yes.

Mr. **Anderson**. Have you served in other operations in an undercover capacity?

Mr. **Amoroso**. Yes. Many.

Mr. **Anderson**. And based upon your experience as an undercover agent, am I correct that an important skill for an undercover agent is to be able to deceive those he is dealing with into believing he is something other than an FBI agent?

Mr. **Amoroso**. I would say yes. When you're dealing with a thief, you try to get to his level.

Mr. **Anderson**. And two more questions. First of all, do you know, has Agent Mazzella ever been an undercover agent?

Mr. **Amoroso**. Yes, I believe so. I think I worked with him one time when we were both assigned to Washington and went to New York.

Mr. **Anderson**. And a final question. You were present, were you not, in Washington, DC, at the Twin Bridges Marriott at the scene of the payoff in the arrest?

Mr. **Amoroso**. Yes.

Mr. **Anderson**. Agent Amoroso, do you know why the video recording equipment was not left running after Mr. Borders came back into the apartment?

Mr. **Amoroso**. The recording equipment was shut down when Mr. Borders left initially and was never reactivated.

Mr. **Anderson**. Do you know why?

Mr. **Amoroso**. It's not policy. We don't interview people with recordings, either NAGRA cassette or video.

Mr. **Anderson**. It's an unfortunate policy. I have no further questions.

The **Chairman**. Is there cross-examination of the witness?

CROSS EXAMINATION

Mr. **Gekas**. Yes, there is. Mr. Chairman, members of the committee.

I direct your attention, Mr. Amoroso, again to Exhibit 14 that has been entered into evidence, Respondent's Exhibit 14, the teletype which is dated August 28, 1981. Isn't it true that by the time that this telex was formulated and sent that Borders had already met with Trafficante at least twice, which was surveilled by the FBI?

Mr. **Amoroso**. I know he met with him at least twice. If you say that it was prior to this time, I'll go along with that. I don't remember the dates. Since retiring from the Bureau, I don't get access to going over that.

Mr. **Gekas**. Well, that's a matter of record.

Mr. **Amoroso**. OK.

Mr. **Gekas**. That's a matter of record. But you know that he was surveilled——

Mr. **Amoroso**. We followed him twice.

Mr. **Gekas** [continuing]. With Trafficante at least twice?

Mr. **Amoroso**. Yes.

Mr. **Gekas**. On the other exhibit, Exhibit 13, the respondent's counsel has made a great deal out of the alleged scam language. Would you look at that language on 13? I guess it's on page 2, paragraph 4. Mr. Anderson wanted to elicit from you, and did, answers about Borders and his conduct. Is there anything in this paragraph that uses the word "scam"?

Mr. **Amoroso**. No, sir.

Mr. **Gekas**. Anything in this paragraph that uses the word "rainmaking"?

Mr. **Amoroso**. No, sir.

Mr. **Gekas**. Anything that talks about a scheme of any type?

Mr. **Amoroso**. No, sir.

Mr. **Gekas**. Isn't it true that what it says is that William Borders is conducting similar business as alleged in captioned matter?

Mr. Amoroso. Correct.

Mr. Gekas. And the captioned matter is bribery and conspiracy?

Mr. Amoroso. Correct.

Mr. Gekas. Isn't that correct?

Mr. Amoroso. Yes.

Mr. Gekas. I have nothing further.

The **Chairman.** Is there redirect examination?

Mr. Anderson. No, Mr. Chairman.

The **Chairman.** Are there questions from the committee to Agent Amoroso? Senator Pryor.

EXAMINATION BY THE COMMITTEE

Senator **Pryor.** Yes, thank you, Mr. Chairman.

Mr. Amoroso, there's a sequence of dates here and events that I think are very critical to this whole case, and I'd like to just mention these dates: July 22, 1985, which was a Monday, Judge Hastings—I think the record is clear on this—receives the first progress report of the wiretaps. Is this the date that you recall, that you're aware of?

Mr. Amoroso. No, not for any particular reason. No.

Senator **Pryor.** All right. The following date, July 23, 1985, I think this is when Mr. Whittle calls FBI Agent Dowd to inquire as to whether his friend, Mayor Clark, is under investigation. Is this a correct date, as far as you are concerned?

Mr. Amoroso. I have no direct knowledge of it.

Senator **Pryor.** All right. You have stated just a few moments ago that in August, which would have been a few weeks alter, after Dowd receives his call from Mr. Whittle, that you were told to stop playing golf with Mayor Clark.

Mr. Amoroso. Correct.

Senator **Pryor.** And the House managers state that on Friday, September 6, 1985, which would have been a few weeks or some time subsequent to the time you were told not to play golf with Mayor Clark, this is when the alleged leak by Judge Hastings to Mayor Clark took place. This is the correct date as far as you're concerned.

Mr. Amoroso. Here, again, I only know this from what I have heard subsequent to that. I had no knowledge of it at the time.

Senator **Pryor.** Question: What did you tell Mayor Clark was the reason for your discontinuing your golf course relationship with him, or getting out of the foursome?

Mr. Amoroso. Well, it wasn't a telling him that we were discontinuing. We always came up with an excuse why we couldn't play. You have to understand the relationship. The mayor did the same thing.

I only played in that group when all four of us played together. Forrester and I played against them two. If for some reason the mayor was dedicating a deli that morning, Sunday morning, he wouldn't play. We wouldn't play. If I was stuck doing some kind of work, I didn't play. The group didn't play.

So it was easy to say, hey, I got something to do, I'm busy, I'm doing this, I'm doing that. You know, it never fazed anybody because the only thing we ever did together was play golf.

Senator **Pryor**. Did Agent Forrester stop playing golf at the same time?

Mr. **Amoroso**. My recollection, yes.

Senator **Pryor**. I'm not going to embarrass you and ask you your handicap. I want you to——

Mr. **Amoroso**. It depends.

Senator **Pryor**. Yes. In fact, Mr. Chairman, at this moment I will stop my questioning, but I may like to proceed momentarily after the other round and ask to pick up with more.

The **Chairman**. OK. That's fine. If there are other questions from the committee? Senator Durenberger?

Senator **Durenberger**. Agent Amoroso, let me ask you a couple, three questions because I don't think they've been asked before, and it seems to me they'll clarify this wide variety of information we've been receiving.

Your involvement is with the organized crime squad in Miami, or was.

Mr. **Amoroso**. Yes.

Senator **Durenberger**. The period of time we're talking about. Some of the other people we have heard from—Santini, Mazzella and so forth—are with something characterized as the corruption squad.

Mr. **Amoroso**. Correct.

Senator **Durenberger**. Could you give us some idea of the relationship between the two? In other words, the manner in which people who work on one or the other of these two squads may converse with each other, may share information on a formal or informal basis, may ask questions of each other about cases that they're working on, and so forth.

Mr. **Amoroso**. Well, the best way to answer that to start off with is that when the case surfaced, Corliss, the SAC, came to me and said he would like me to run the investigation for two reasons: one, the fact that Trafficante's name came up; secondly, I had experience with undercover and corruption matters. Normally, I think, other than that, it would have gone to a public corruption squad. But because of those factors, he came to me and said he wanted my squad to handle it.

Normally, these squads are kept separate. The only time you glean any information whatsoever that some things are going on, the example would be if there was a Title III being implemented within the office, because of the manpower constraints, we would have a supervisor's conference with the SAC, and he would indicate—for example, he'd say: Well, Mazzella's squad's got a Title III coming up. I need a body from you, a body from you, and a body from you. And we would provide the bodies on a 30 day basis, or whatever he deemed necessary to man the Title III. Those fellows would go off and then be supervised by the supervisor of the Title III. If it ran over 30 days, we might replace him depending on what our needs were for that particular agent. If not, we'd let him stay for the duration of the Title III.

We tried to at all times keep the stuff very compartmentalized amongst the squads themselves.

Senator **Durenberger**. Now, basically, that describes, at least for me, kind of formal relationships. Can I make some assumptions about informal relationships about the members of those two squads, that they can get information from each other or they'll ask each other questions, do you know so-and-so, do you know such-and-such, have you heard this, have you heard that?

Mr. AMOROSO. I would say an assumption is what you want to believe. On that basis, it could happen. I don't know, but I assume it could happen.

Senator DURENBERGER. Can you recall when and how you first learned or the corruption squad—excuse me, you first learned of the corruption squad's investigations in 1985 of the Hialeah zoning matter?

Mr. AMOROSO. Well, to the best of my recollection, I learned about it because I was asked—and here, again, I don't remember who. It might have been Giannotti; it might have been Mazzella; it might have been Santini. I was asked some questions concerning undercover operations. From that, I knew that there was an undercover operation going on, Giannotti was the undercover agent, and it involved Hialeah. That's as much as I knew.

Some time later—exactly how long, I don't know—I knew about a Title III coming off the PC squad because I had a supply of manpower along with all the other supervisors. Not being stupid, I figured that it was something that one led to two, as normally it would always happen. And that's as much as I knew until—I believe until Corliss called me in and told me about not playing golf.

Senator DURENBERGER. So somebody on the corruptions squad asked you for information?

Mr. AMOROSO. Yeah, about how to handle something in relationship to undercover operations. I got calls from a lot of people along that line.

Senator DURENBERGER. Well, that's why I asked you the first set of questions, because I know nothing about your business and I just make certain assumptions about the fact that one set of resources uses another set of resources if they're presumed to have some experience.

Mr. AMOROSO. Yeah, but you try to keep it to a need-to-know basis and limit the information. I mean, I've been there long enough. I wouldn't sit there and ask Gino or Mazzella, OK, what's going on? It's none of my business.

Senator DURENBERGER. All right. Do you recall when and how you first learned of the corruption squad's investigations on the Surfside police?

Mr. AMOROSO. I don't even . . . even now I don't recall anything about that. You got to understand something, too. If I'm not mistaken, at that time my squad was assigned to Fort Lauderdale. I wasn't even in the Miami office. I would only come down for conferences and, you know, file reviews and stuff like that. The rest of the time I did that. I was—as I say, I was—also at the same time I had another long-term undercover operation going on in West Palm Beach, organized crime corruption type thing that I supervised for over a year.

Senator DURENBERGER. How about the ILA?

Mr. AMOROSO. No. I——

Senator DURENBERGER. Your recollection on how and when you first heard about that is about the same as your recollection on the Surfside police?

Mr. AMOROSO. Yes. I don't tie any of that together. I mean, I just—whatever I heard later on I heard. In one ear and out the other.

Senator DURENBERGER. But you have a more specific recollection on the Hialeah zoning——

Mr. AMOROSO. Only because I came and was asked for input on how to do something.

Senator DURENBERGER. Let me now ask you to take your recollection to the circumstances surrounding the arrest of Bill Borders. I think you testified that you were present at the Twin Bridges Marriott Hotel at that time, were you not?

Mr. AMOROSO. Correct.

Senator DURENBERGER. As I recall the situation, Borders was taken into custody outside the hotel; is that correct?

Mr. AMOROSO. He was in a vehicle driving away with my undercover agent.

Senator DURENBERGER. And where were you at that time?

Mr. AMOROSO. I was in an adjoining room monitoring the TV.

Senator DURENBERGER. OK. So after they—was it Foster and Bird, I guess, by these notes I'm looking at—took Borders into custody, they brought him back to room 103 at the Twin Bridges Marriott?

Mr. AMOROSO. They brought him back, I believe, to the adjoining room where we had had the monitoring equipment, not the room that was set up with the equipment. I believe. I'm not positive.

Senator DURENBERGER. Well, were you in that room at the time they brought him back?

Mr. AMOROSO. Yes. Oh, yeah.

Senator DURENBERGER. OK. So your recollection is that your agents came back with Borders into——

Mr. AMOROSO. At my direction. I told them to bring him back.

Senator DURENBERGER. OK. Then would you describe what took place next and what conversations were had with Borders? Who, in effect, at that point took charge of the questioning of Borders?

Mr. AMOROSO. Basically, Murphy laid out the case to Mr. Borders as to, you know, what we had. We even, I think, played a tape, tape recording for him. We laid the whole thing out to him, trying to put him in a position where he would feel hopeless and that he would decide to cooperate with us.

Senator DURENBERGER. Now, by "we," are you referring to you and Special Agent Murphy?

Mr. AMOROSO. I mean the Federal Government, period.

Senator DURENBERGER. I need to——

Mr. AMOROSO. OK. Murphy and I. Yes.

Senator DURENBERGER [continuing]. Keep saying where your role is in this so that I know——

Mr. AMOROSO. Yes. Murphy and I.

Senator DURENBERGER. OK. So he was advised of his rights, I take it.

Mr. AMOROSO. Yes.

Senator **Durenberger**. He signed a waiver of rights, and then you began the interview process.

Mr. **Amoroso**. Well, it was—if you want to call it an interview, fine.

Senator **Durenberger**. I'm reading from FBI notes.

Mr. **Amoroso**. Yeah, OK. Well, we laid out the case to him, and he really didn't want to get into any——

Senator **Durenberger**. Well, tell us how you laid out the case to him.

Mr. **Amoroso**. Exactly—Murphy laid it out exactly as, you know, the fact that Rico was an undercover agent, that we had monitored all these things. We played, I believe, the phone conversation for him. Just trying to build in his mind the fact that we had him cold, trying to elicit his help in going further with the investigation.

Senator **Durenberger**. Now, describe for us the manner in which you, quote, "tried to elicit his help"?

Mr. **Bryant**. By laying out the case to him.

Senator **Durenberger**. I understand that you've laid out the case to him. Now, you say you began to elicit his help.

Mr. **Amoroso**. We asked him——

Senator **Durenberger**. What do you mean, you began to elicit his help?

Mr. **Amoroso**. We asked him, you know, if he would like to aid us in the investigation.

Senator **Durenberger**. Is that the way you approach it: "Would you like to aid us in the investigation?"

Mr. **Amoroso**. I don't know what Murphy's terms were. I mean, I'm sure it might be written in that 302 or something.

Senator **Durenberger**. I'm not trying to catch you on anything, but I just want you to describe how you tried to elicit Borders' help to do what.

Mr. **Amoroso**. Well, you lay out the case to him and say: Look, you're caught, you're dead. You gonna help? Get yourself as much help as you can now.

He looked a little puzzled. He said, "I'd like to think about it," my recollection; then he decided he wanted to call his lawyer. We provided him with a phone call. He called his lawyer. I don't remember his lawyer's name. He come over, said he doesn't want to—he talked to him for a while and said, "He doesn't want to talk to you any more."

Senator **Durenberger**. The attorney's name was John Shorter; is that what you recall?

Mr. **Amoroso**. I believe so, yes.

Senator **Durenberger**. During the period of time it took between the telephone call to his attorney and Shorter's arrival, did you continue to pursue with him your efforts to get him to cooperate?

Mr. **Amoroso**. I don't believe so.

Senator **Durenberger**. Then, again, I'm just looking at the FBI notes and trying to elicit your help because nobody else has testified to the details of these conversations. Shorter arrived about 1:31 p.m., and he and Borders went off, had a conversation which appears to have lasted about eight minutes, then came back out. Do you recall this, that they did go in and meet for a while and came back?

Mr. AMOROSO. I know they came back, they met for a while, then they came out. The only thing I remember is the answer is no, he's not going to help.

Senator DURENBERGER. Then they went back in and had another little conversation, and I take it the answer didn't change. Is that right?

Mr. AMOROSO. That's correct.

Senator DURENBERGER. Can you recall with any specificity what it is you asked of Borders, either you or Murphy or the Federal Government?

Mr. AMOROSO. Well, what we——

Senator DURENBERGER. What would you have liked to have had him do?

Mr. AMOROSO. What I'd liked to have had him done?

Senator DURENBERGER. Yes.

Mr. AMOROSO. I'd liked to have wired him and sent him in to see Hastings.

Senator DURENBERGER. Is that what you asked him to do at the time?

Mr. AMOROSO. No. We didn't ask him to do that at that time. We were just trying to get him to say yes, he would cooperate. Then we go from there.

Senator DURENBERGER. Did you have any conversations with Borders then after the either one or two no's, we're not going to cooperate at this particular point in time?

Mr. AMOROSO. I don't believe so. I think at that time Shorter kind of took over the speaking for his client. As far as I was concerned, once Shorter got there and he initially said no, that was going to be the end of it.

Senator DURENBERGER. Last question. Several times the counsel for respondent has asked about why the video and recording equipment that was in—presumably it was in the undercover Room 103 was turned off, and I think in both cases, most recently here a few minutes ago, the response was, well, it was company policy.

Mr. AMOROSO. It is. We just—I've been in the FBI 25 years. I've never interviewed a subject or a witness or anybody else with a tape recorder, a video. Only in an undercover capacity have we ever done that. I would assume—I don't know who sets the policy or why it was set, but just an assumption, you know, if you offer that service or you do it for one, I'm sure most attorneys would want it done for all their clients. So then you're stuck with bank robbers, everything, agents would have to travel with tape recorders all the time then. I just—it doesn't seem kind of feasible to me. I guess the Bureau agrees. They set the policy.

Senator DURENBERGER. Thank you very much.

The CHAIRMAN. Yes, Senator Gorton.

Senator GORTON. Mr. Amoroso, do you have Respondent's Exhibit 13 before you? September 2, 1981.

Mr. AMOROSO. Yes.

Senator GORTON. Can you enlighten us at all about paragraph 4 on page 2, the fact of an unnamed Federal appellate court judge in New Orleans, Louisiana? Does that line mean anything to you? Did you ever hear anything about such a judge?

Mr. AMOROSO. As I say, I was in on the initial debriefing of Dredge. I don't remember what he said. He made a number of statements. My position has always been: Produce what you say you can produce. We start from him giving us a statement. We advise the Bureau or whoever we have to advise, depending on what type of investigation it is, and we go from there. We either prove or disprove what they've told us.

Senator GORTON. Well, are you telling me that you remember his making such a statement but it didn't seem to prove out? Or you don't remember his making such a statement at all?

Mr. AMOROSO. Unless I saw the 302, okay, I'm assuming that Murphy didn't lie and didn't make this up, okay. I think we've established that. Borders would have said it. Do you want me to look at the 302? And it's in there. I initialed it. Then it would be accurate. I'm going by the fact that this is——

Senator GORTON. You don't have any independent knowledge of this?

Mr. AMOROSO. No. Only for the fact that it's in here, I initialed it at the time. I read it in close proximity to its writing. And I would say it was accurate. If you want me to go further, I'd have to see the original 302 that Murphy drafted.

Senator GORTON. Thank you, Mr. Chairman.

The CHAIRMAN. Are there other questions from the committee? Senator Bryan.

Senator BRYAN. Just following up on Senator Gorton's questioning, having at some point in time probably looked at this report, referring to Respondent's Exhibit 13, was anything done to ascertain whether there was any truth to the allegation made that, indeed, there was another operation or potentially another operation involving a Federal judge in New Orleans?

Mr. AMOROSO. Well, what you have to understand, to start with, is when you are involved in an undercover operation, it's very difficult, when you get information, to then to try to do something overtly while you are in a covert stage.

Our key in this whole thing was William Borders, we tried to concentrate on William Borders. Our best shot at William Borders was William Borders and Hastings. That is why we were in that hotel room, trying to roll William Borders over. When we rolled him over, the first guy was Hastings, the next guy down the line was anybody else that, you know, he was going to give us the names of. That may be why—I mean now I'm speculating—that may be why Borders didn't want to talk at that time, figuring that he would have to give everybody up, based on his recollection of what he told Dredge.

I am only going by my experience now. So, you couldn't get involved in an overt investigation on another judge, who at this time they are not giving his name, until you finish up one case.

Senator BRYAN. Did you ever acquire any information subsequent to the date of this Telex, which I believe is the second, which would indicate that Borders was involved in any other kind of operation with other Federal judges? Did any other information ever come to you?

Mr. AMOROSO. Vaguely, I think something came up, but I don't remember—Murphy would have to be the—he lived with this case day after day after day, and I just, you know, got the important, you know, high points, but I think at some future point something came up in terms of another judge.

Senator BRYAN. And Mr. Borders, there was an alleged nexus between the two?

Mr. AMOROSO. I believe—I don't want to state yes, because I'm not positive. Murphy would have to be the fellow to ask that question.

You have got to understand something, too, that later on the case was taken off my squad, Murphy was gone from my squad, so that I lost a lot of contact with him.

Senator BRYAN. Mr. Amoroso, when the jury acquitted Judge Hastings, I presume, with the amount of time that you had invested in this case and the effort, that that was a personal or at least a professional disappointment to you.

Mr. AMOROSO. I would say so, yes.

Senator BRYAN. Having that frame of mind, let's skip now to 1985. One of the things that intrigues me about this case is that we've heard testimony from other witnesses that articles began to appear, in I believe it would be the Miami Herald or one of the other Miami newspapers, indicating that there was ongoing concern, problems, allegations of impropriety, kind of a network of activities, and Senator Durenberger has questioned you about some of those and you indicated that you didn't have a recollection as to some aspects of that, but a lot of this was appearing in the newspaper for public consumption, dealing with the problems of Hialeah, zoning. As we understand it, there was a series of articles that the newspaper was running on these kinds of issues that suggested, if not outright, asserting that there was outright corruption enterprises. Do you remember reading any of those articles, just generally? I am not going to ask you specifics, but——

Mr. AMOROSO. You probably do, if you pick up the Miami Herald any day of the we[illegible] you are going to find that.

Senator BRYAN. But you generally read the newspaper in that time period?

Mr. AMOROSO. I generally read the newspaper, yes.

Senator BRYAN. I guess what I find a little bit surprising is, we have been led to believe that these articles, at least in part, made reference to Mayor Clark, that there were very unflattering references. In fact, one of the Mayor's great defenders contends that these articles were false, that there was a lot of information which was subsequently disproved.

Without going into the merits and demerits of the various arguments, if indeed you were reading the newspapers at that time, did it suggest to you that maybe there might be some perceived—I use the word "perceived"—impropriety in this continuing social relationship that you had on the golf course with the Mayor and Mr. Whittle.

Mr. AMOROSO. I don't personally care what anybody thinks. He was a friend and I played golf with him. We never discussed business. I mean, I worked hard enough Monday through Friday or Saturday, whenever I had to, or Sunday, when I got out there on the golf course, all I wanted to do was play golf. It was the same with him. If he was healthy and playing golf, I would play golf with him every weekend. Unfortunately, he is not, so——

Senator **Bryan**. Of course, at this point you are retired from the Bureau, but the point that I am trying to——

Mr. **Amoroso**. I would have when I was still playing, I did play with him after these things went down, I played on a few occasions, not very many. He got real sick later on and he never played golf.

Senator **Bryan**. Some of the information that clearly you became privy to later was rather unflattering to the Mayor.

Mr. **Amoroso**. It was unflattering to the Mayor, and I guess everybody in Dade County—ever since I have been in Miami, somebody was getting knocked in the press for doing something wrong. If you will pick up the Miami paper today, you will find something probably on the Airport Authority.

Senator **Bryan**. But the thought never entered your mind, "Look, I know I've not done anything wrong, I'm not involved in any kind of improper relationship with the Mayor, but because I'm a law enforcement official and with the FBI, that the FBI is frequently involved in operations to ferret out crime and public corruption, that maybe there may be the perception that I ought not to have this close relationship with him."

Mr. **Amoroso**. I think under our system that everybody is innocent until proven guilty, so why should I sever a relationship when he hadn't been indicted, nothing has happened to him? I disagreed with Corliss when he said stop playing golf with him, but he's the boss and I said fine, I'll stop.

Senator **Bryan**. That's the next question I had. I clearly detected—and you have reinforced that in your last remarks—that you were reluctant to give up that relationship.

Mr. **Amoroso**. Well, I was reluctant, when he mentioned that to me. My first indication was the Bureau, in that if it is going to hurt a case, suppose I stopped playing golf with him, would it—and I didn't know what the case was about—would it trigger something in the man's mind that would say why did he stop playing golf. I presented that case to Corliss, and he said, "No, I don't think so, I think what we ought to do is you ought to stop playing golf with him." "You're the boss, fine," I stopped playing golf with him.

Senator **Bryan**. Was that the only reason that you were reluctant to give it up, the relationship with the Mayor and the golf course?

Mr. **Amoroso**. It wasn't that I was reluctant in that sense. When he made that statement, then my natural instincts went towards the Bureau, and then I said to him—then it was a matter of, well, if it's a position of me stop playing with him, and I just threw it to him, I said, "You know, this may trigger something in his mind that, why has he stopped playing." I didn't ask about the investigation. Whatever he told me, that was fine. If he didn't want to tell me, I've been around long enough to know that that's the way we work.

I presented the situation, he said, "No, I feel it's better that you do not play." "That's fine, you're the boss," I stopped.

Senator **Bryan**. Understand the context that these questions are asked. We are trying to ascertain on a broad number of issues what the facts are. We've had evidence presented to us that Mr. Whittle, one of the foursome, made a call to Special Agent Dowd, allegedly based on information provided by former Agent H. Paul Rico, that there was an investigation going involving the Mayor, and specifically asking Agent Dowd whether or not such information was true and, if true, it's obvious from the testimony of Mr. Whittle, that that information would be relayed to the Mayor, and there is testimony before us that that occurred.

There is also some conflicting testimony or at least testimony that no recollection at this time can be ascertained as to whether or not that call was made. We have, you know, a time frame in which that call was made on July 23, 1985. The day before that, there was a progress report on the Title III communication that was provided to the Federal judge involved in this case, Mr. Hastings. That information seems to have been in a circle of agents that had a relationship—and again, I am not suggesting an improper relationship, but a relationship with the Mayor and Mr. Whittle, who are key figures.

If indeed that information was circulating about at that time, that would be six to seven weeks before the Mayor's testimony that he specifically told Judge Hastings, "Stay away from Waxy Gordon, he's hot"—I mean that's a rather substantial period of time to have that information out and about. Do you have any thoughts, based upon your experience, the knowledge, because you know these people, you know Mr. Whittle, you know the Mayor, you know Special Agent Dowd, all of these people? It seems to some of us on this committee that there was a lot of information that was out and circulating at this time about the Mayor and his activities.

Mr. AMOROSO. Well, all I can say is that I think I've laid out exactly what I knew about the case. As to Mr. Whittle, I don't know who would give him any information. If you have talked to Mr. Whittle, you know Mr. Whittle. I don't know who would ever give him any information about anything.

Senator BRYAN. Well, the allegation——

Mr. AMOROSO. I don't know.

Senator BRYAN. Well, the allegation, you understand the allegation is that——

Mr. AMOROSO. I understand it.

Senator BRYAN [continuing]. Paul Rico is supposed to have——

Mr. AMOROSO. I don't know, I have no knowledge of that.

Senator BRYAN. That's all I have. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Specter has some questions.

The VICE CHAIRMAN. Yes. Thank you, Mr. Chairman.

Special Agent Amoroso, the issue has been raised on a number of occasions in this hearing, as pursued by my colleague Senator Durenberger a few moments ago, as to the sequence of events after Mr. Borders was arrested, and I believe that that is extremely important and would like to focus, with particularity, on a couple of occasions where Mr. Shorter, the attorney for Mr. Borders, and Mr. Borders stopped talking and apparently had a conversation with the FBI agents, and there is a suggestion, perhaps even an inference, that Mr. Shorter was talking about some arrangement that might be of interest to Mr. Borders. And I say that because the logs show that:

Borders and his attorney ended their conversation at 1:42, and at 1:43 Borders and his attorney were requested and received additional private conversation in Room 103. Then, at 1:44, private conversation ended. At 1:45, Borders and his attorney requested and received additional private conversation in Room 103, and at 1:47 private conversation ended.

Now, I understand that these times are not down to the second, but this sequence is plain that Borders talks to his lawyer, then their conversation ends, then he talks to his lawyer again and their conversation ends, and he talks to his lawyer again and their conversation ends, and there is a strong suggestion that those conversations ended because Mr. Shorter, the attorney, wanted to talk to the FBI. If they had had one conversation and come out and said we're not talking, so be it. If they had one conversation and came out and we don't know what happened, so be it.

Mr. AMOROSO. OK.

The VICE CHAIRMAN. But I think it is very important as to what happened. Did Mr. Shorter say we will cooperate if he gets immunity, we will cooperate but he is not going to implicate Judge Hastings? What happened here?

Mr. AMOROSO. To my recollection—and here again, I think the individual that can give you this almost word for word would be Murphy. I have not dealt in this. But what I can tell you was, when——

The VICE CHAIRMAN. We asked Mr. Murphy.

Mr. AMOROSO. OK.

The VICE CHAIRMAN. Mr. Murphy didn't know.

Mr. AMOROSO. OK. When Mr. Shorter——

The VICE CHAIRMAN. He testified he didn't know.

Mr. AMOROSO. OK. And I can tell you what would have happened. When Mr. Shorter came over, we gave the same presentation, he talked to his client. We filled him in, he came out, my recollection is he came out and asked us, you know, to run it down. We ran it down for him. We told him that we wanted——

The VICE CHAIRMAN. He asked you to run it down to him? Run what down, tell him about all the incriminating evidence on Mr. Borders?

Mr. AMOROSO. Right, what had happened, that we had an undercover agent, you know——

The VICE CHAIRMAN. When did that happen on the sequence? This didn't happen——

Mr. AMOROSO. I'm saying what I am assuming what happened. You are saying that he went in and he talked to his client——

The VICE CHAIRMAN. That didn't happen in the course of a minute or so.

Mr. AMOROSO. You are giving me—you are asking me what could have happened and why he came out. I'm telling you why I believe he would have come out, to ask us something about——

The VICE CHAIRMAN. But I am saying to you, Special Agent Amoroso, that in the course of what you recorded in this minute, which may not be exactly a minute, but it wasn't a long time, there wouldn't be time in that interval for you to start replaying the incriminating evidence.

Mr. AMOROSO. We wouldn't replay—I don't think we would replay——

The VICE CHAIRMAN. Or tell him about the incriminating evidence. There would just be time for a very short conversation. You can say——

Mr. AMOROSO. How much time are you talking about?

The VICE CHAIRMAN. Well, I'm talking about what your logs show. They ended the conversation—Shorter arrives at 1:31, then at 1:34—and these are your logs—Mr. Borders and Mr. Shorter are allowed to speak in private, they talk for 8 minutes, they come out at about 1:42, they have ended their conversation and there's a short break. You've recorded it here as minute, but there's a short break, not time enough for you to give him a big pitch or to summarize the evidence——

Mr. AMOROSO. OK.

The VICE CHAIRMAN [continuing]. And they go back and they talk again, they talk for a short time, according to the logs just a minute, and they come out and there's a break for a minute, then they go back at 1:45 and they talk for two more minutes, to 1:47, then they come out and there's a gap until 1:56, when they escort Borders away. So, there are two periods of time, three private conversations, two intervening periods of time when they wanted to break their conversation, obviously for the purpose of breaking their conversation, talking to the law enforcement officials.

Mr. AMOROSO. For a period of a minute at a time.

The VICE CHAIRMAN. That's what you have recorded.

Mr. AMOROSO. OK. I don't think I made the log. It may have been——

The VICE CHAIRMAN. Well, you are not suggesting that the log is incorrect?

Mr. AMOROSO. No, I'm not saying that. I'm just saying I don't know if I wrote the log, that's all I'm saying. I didn't say the logs are incorrect.

The VICE CHAIRMAN. What relevance does it have to whether or not you wrote the logs?

Mr. AMOROSO. I'm not saying there's relevance. I'm saying I didn't write the logs that record the time. All I am saying to you is, when those periods occurred, I don't know, I have no recollection of why they would have occurred. All I know is, when we talked to Shorter, our position was with him that we wanted Borders to give us everything, we wanted him to give us everything that he had, including——

The VICE CHAIRMAN. Was there ever any hesitation on the part of Mr. Shorter about cooperating?

Mr. AMOROSO. I think—here again, I would have to give you an opinion. I think at the time that Borders was leaning toward possibly doing it. It is all opinion. I think Shorter was the one that finally convinced him not to do it, and I think it was because of the fact that we wanted everything, we did not want just Hastings, we wanted everything else that he had had, and he didn't know exactly how much other corroborating evidence on anybody else that he had mentioned that we had.

The VICE CHAIRMAN. Well, when you say you wanted everything that Mr. Borders knew, what were you suggesting besides possibly Judge Hastings?

Mr. Amoroso. Other information that he had started off giving us about having another judge, as indicated——

The Vice Chairman. He had started off giving you information about another judge?

Mr. Amoroso. No, no. During the initial conversations with Dredge that we have recorded here that we've put up——

The Vice Chairman. I'm familiar with what Mr. Dredge said——

Mr. Amoroso. OK. Well, we're trying to corroborate that information by squeezing Borders. We're trying to get him in a position where the man is going to roll over, he is going to give us Hastings, he's going to give us everybody else he knows. That's the way we do it.

The Vice Chairman. Well, was there——

Mr. Amoroso. I don't know of any other way.

The Vice Chairman. Was there some point, as best you can recollect, where he suggested that he would cooperate with you in part, but not fully?

Mr. Amoroso. No. No. It is just—I am giving you—you're asking me some things that involve opinion, and from being in this business for 25 years, it looked like to me that he was on the verge at one point of rolling over.

The Vice Chairman. Well, I'm not asking you for opinions.

Mr. Amoroso. OK.

The Vice Chairman. What I'm asking you for is your recollection as to what happened.

Mr. Amoroso. During the 1 minute interval——

The Vice Chairman. Now, I understand——

Mr. Amoroso [continuing]. I can't remember.

The Vice Chairman. I understand you can't remember, so what you are saying to me is that you are trying to reconstruct it, as to what you think as a matter of practice would have occurred.

Mr. Amoroso. What would take place in a minute's time, yes, the attorney would come out and say—give us a theory, we'd say no, yes, we want it all.

The Vice Chairman. Well, I'm not going to pursue this very much longer, Special Agent Amoroso, but I do want to ask you, since you were there—and I pursued this with Special Agent Murphy—what happened in this period of time after Mr. Borders was taken into custody at 12:53 and 1:18, when he requested an opportunity to telephone his attorney?

I read the logs, and this is a very critical period of time, because this is before he asks for his right to counsel.

Mr. Amoroso. Correct.

The Vice Chairman. So, he's there without his lawyer, and the logs show that he is advised of his rights.

Mr. Bryant. Senator, may we give the witness a copy of the logs?

The Vice Chairman. Oh, sure.

I'm focusing at this moment, Special Agent Amoroso, at page 2 of the logs, and the first time sequence there is 12:53 p.m., Borders taken into custody.

Mr. Amoroso. Yes.

The Vice Chairman. And then you see farther down, 1:18 Borders requested and received permission to telephone his attorney?

Mr. AMOROSO. Yes.

The VICE CHAIRMAN. And I see 12:55, Borders advised of his rights by Special Agent Foster, Borders stated he understood his rights.

Mr. AMOROSO. Correct.

The VICE CHAIRMAN. And I see at 1:06, Murphy advises Borders of his rights.

Mr. AMOROSO. Correct.

The VICE CHAIRMAN. Why don't you proceed to ask him questions at that stage, instead of advising him of his rights twice?

Mr. AMOROSO. OK. What I——

The VICE CHAIRMAN. You don't have to advise him of his rights twice, do you?

Mr. AMOROSO. All right, let me go over it.

The VICE CHAIRMAN. You've got a pending question here.

Mr. AMOROSO. All right. At 12:53——

The VICE CHAIRMAN. The pending question is do you have to advise him of his rights twice.

Mr. AMOROSO. Would you let me explain it my way?

The VICE CHAIRMAN. All right.

Mr. AMOROSO. At 12:53, Mr. Borders is taken into custody. He was taken into custody in the vehicle with Mr. Rico approximately three-quarters of a mile away from the hotel. OK. This appears to me to be an overall log that Mr. Murphy wrote up, it's not the individual logs. He was taken into custody at 12:53 by these agents in his vehicle with Mr. Rico. He was then, I assume, patted down, as they say, when they arrested him, he was then transported to the hotel by these agents.

The VICE CHAIRMAN. Special Agent Amoroso, let me interrupt you for just a minute, to suggest that you may be in error, because the log shows on the preceding page that it was at 12:40 when Borders' vehicle was stopped.

Mr. AMOROSO. Well, you're saying—at 12:53 p.m., Borders taken into custody by—all right, those agents took him into custody when they stopped the vehicle.

The VICE CHAIRMAN. No, not according to your logs on the preceding page. There's a representation that they took him into custody at 12:40 when his vehicle was stopped——

Mr. AMOROSO. OK.

The VICE CHAIRMAN [continuing]. And placed under arrest.

Mr. AMOROSO. OK. Then he was——

The VICE CHAIRMAN. What I am trying to find out, and I would just like to cut to the heart of it, if you can help us——

Mr. AMOROSO. OK.

The VICE CHAIRMAN [continuing]. Is what happened in this period of time with respect to active, aggressive questioning of the man.

Mr. AMOROSO. When they took him into custody and transported him back, from this overall log, this was a log that was made up, from my looking at it, by Murphy, which encompasses different agents doing different stages of this arrest. He was turned over, apparently, from looking at this, from Warner and Snyder, they transported him, they turned him over to Foster and Bird. These agents knew nothing about the investigation, except that they were part of Washington Field, they were part of the surveillance.

As is normal routine for FBI agents when they grab somebody and have them in custody, they advise him of his rights. We were trying to make sure that anything we got from Mr. Borders was going to stand up at some future point, so I see no problem with Mr. Murphy—to me, this is when the thing starts, at 1:05, when Mr. Murphy enters the room to start talking to Borders. I enter at 1:06. This is when, as far as I'm concerned this is when the questioning—not the questioning, but the laying out of what we had with Mr. Borders started, at 1:05 p.m., when Mr. Murphy did it. These other agents, they were just borrowed agents from Washington Field doing surveillances, they were in on the arrest, they had no knowledge, very, very small bits and pieces of what this case was.

The key to this thing is 1:05 when Mr. Murphy enters the room, I enter the room, and then he is advised of his rights again, because we're the two fellows who are going to talk to him. Murphy knows this case backwards and forward, he has got the tapes, he's got whatever we're going to talk to him about. This is when this thing starts, is 1:05.

The VICE CHAIRMAN. OK. Then the question is what happens between 1:05 and 1:18.

Mr. AMOROSO. We lay out what we have. We tell him that Paul Rico is an undercover agent, we tell him—I don't believe we told him that Dredge was an informant. We told him that Rico was undercover, we've taped his conversations, we've had had the phones tapped, you know, we went through the whole thing. We laid out the entire thing to him. We didn't ask him any questions. We were trying to put him in a posture where he figured this was hopeless and that he should just roll over and give us what he had.

The VICE CHAIRMAN. Special Agent Amoroso, on your log here, it's noted that "Borders advised he understood his rights and signed waiver of rights portion of FD 395".

Mr. AMOROSO. OK.

The VICE CHAIRMAN. By that, do you mean that he waived his Miranda rights?

Mr. AMOROSO. He signed a waiver of rights, yes.

The VICE CHAIRMAN. Well, one of the rights is that you have a right to consult with counsel.

Mr. AMOROSO. Correct. That was the first thing we handed him.

The VICE CHAIRMAN. All right, but did he sign at that time a waiver of his right to consult with counsel?

Mr. AMOROSO. If he signed it, he signed it. I would have to see the waiver. It has got to be there some place, you must have it.

The VICE CHAIRMAN. Do the House managers have the waiver?

Mr. BRYANT. Not that we are aware of, Senator.

The VICE CHAIRMAN. But the standard form of the waiver is, as it says, he waives his right to consult with counsel.

Mr. AMOROSO. I agree with you, I do.

The VICE CHAIRMAN. My question to you is if he waived his right to consult with counsel at that time, did he later change his mind and say he wanted to consult with counsel?

Mr. AMOROSO. Yes.

The VICE CHAIRMAN. Just a couple more questions, Special Agent Amoroso.

From the memoranda which have been identified by counsel for Judge Hastings, there is a notation that, at a relatively early stage of the proceedings, there was an effort to remove Judge Hastings from the case, and now I turn to pages 1, 2, 3, 4, 5, 6 of Exhibit 14 of Respondent, and it says:

> These same Strike Force attorneys have advised that they will try to have the judge removed from the case based on the evidence to date.

In order to boil it down, without asking you what the evidence was, as I understand it, you had what Mr. Dredge had said up to that time, but was there any evidence which implicated Judge Hastings at that time?

Mr. AMOROSO. I believe this is referring to the *Trafficante* case.

The VICE CHAIRMAN. Well, was there any evidence which implicated Judge Hastings at that time on the *Trafficante* case?

Mr. AMOROSO. The information that we had gleaned at this point in time, we followed Borders twice, he met with the—I believe now—Borders comes down to Miami twice, meets with Trafficante, he flies to Miami, takes a cab to the Fontainebleau Hotel, meets with Trafficante, gets in his car and drives back to the airport and flies back out—slightly suspicious.

He's making allegations at that time that Judge Hastings is someone that could be handled on the——

The VICE CHAIRMAN. He's making those allegations to whom?

Mr. AMOROSO. He has mentioned them to Dredge. I'm not sure at this time if we had a meeting with him as far as Mr. Rico is concerned, with Dredge introducing him. I don't know what the sequence is.

The VICE CHAIRMAN. So, you have what Mr. Dredge says he heard from Mr. Borders——

Mr. AMOROSO. Correct.

The VICE CHAIRMAN [continuing]. And you have Mr. Borders meeting with Mr. Trafficante.

Mr. AMOROSO. Correct.

The VICE CHAIRMAN. Anything more?

Mr. AMOROSO. I believe we had the meeting between Rico and Borders. I'm not positive, because I don't—offhand, I don't recall the date sequence.

The VICE CHAIRMAN. Assume that you have it——

Mr. AMOROSO. OK.

The VICE CHAIRMAN [continuing]. I'm still searching for the evidence as to Judge Hastings. How is Judge Hastings implicated at this point? What evidence is there against Judge Hastings?

Mr. AMOROSO. Borders——

The VICE CHAIRMAN. Now, later Judge Hastings is on some taped telephone conversations, which constitute circumstantial evidence. But what evidence is there as to Judge Hastings at this point?

Mr. AMOROSO. I believe that question is better asked to Mr. Weingarten and his partner. Those were the attorneys. We presented the facts to the attorneys. The United States Attorneys Office, Public Integrity, they make the decisions as to prosecution and what not.

The VICE CHAIRMAN. Well, I understand that, but you are an experienced special agent and you had significant responsibility in this case——

Mr. AMOROSO. Correct.

The VICE CHAIRMAN [continuing]. And you know the facts and I'm asking you.

Mr. AMOROSO. I think, based on that information, based on the point of reliability at that time, I don't see anything wrong with it.

The VICE CHAIRMAN. You think that constitutes evidence sufficient to start to take a Federal judge off the case?

Mr. AMOROSO. I think when Mr. Borders is dealing with Mr. Trafficante and he says that he's got Mr. Hastings in his pocket, I think that that's sufficient, in my mind.

The VICE CHAIRMAN. These documents also refer to an allegation that Mr. Borders said he had a Federal judge in New Orleans also in his pocket.

Mr. AMOROSO. Correct.

The VICE CHAIRMAN. Was there any further information to support that?

Mr. AMOROSO. No, that's why we were trying to roll Mr. Borders, is to get his cooperation and go further with the investigation.

The VICE CHAIRMAN. We have heard a great many opinions in this proceeding, and I don't place very much weight on them, but let me ask you at this juncture, in line with our practice here, whether you have an opinion as to whether Mr. Borders had a Federal appellate judge in New Orleans whom he could influence?

Mr. AMOROSO. I would say, based on what I know, yes.

The VICE CHAIRMAN. And what is it that you know?

Mr. AMOROSO. What's been brought up at this hearing, the prior hearing, and what is going to be brought up at this hearing.

The VICE CHAIRMAN. Well, specifically, what?

Mr. AMOROSO. You asked me something based on experience.

The VICE CHAIRMAN. Yes.

Mr. AMOROSO. My 25 years experience says Borders was telling us the truth, as simple as that.

The VICE CHAIRMAN. About a Federal judge?

Mr. AMOROSO. About having a Federal judge in his pocket, yes.

The VICE CHAIRMAN. And you don't think that Mr. Borders was just trying to lure money into his own pocket?

Mr. AMOROSO. No, in my estimation he was too well politically connected.

The VICE CHAIRMAN. But isn't it true, Special Agent Amoroso, that there's no statement by Mr. Borders to that effect, that there's only a statement by Mr. Dredge who said that Mr. Borders said it?

Mr. AMOROSO. Well, first you asked me my opinion——

The VICE CHAIRMAN. Yes.

Mr. AMOROSO [continuing]. And now you're trying to turn it around and say isn't it true that he said it. You asked me first my opinion. I've given you my opinion, and now——

The VICE CHAIRMAN. Now, wait a minute. I'm not trying to turn anything around, Special Agent Amoroso. What I'm trying to do is find out what the facts are, and I asked you——

Mr. AMOROSO. You asked my opinion.

The VICE CHAIRMAN [continuing]. And then I asked you one question about your opinion——

Mr. AMOROSO. OK.

The VICE CHAIRMAN [continuing]. And then you said that, I thought that you said that Mr. Borders said he had a Federal judge in New Orleans. Did you say that?

Mr. AMOROSO. Yes, Mr. Borders said——

The VICE CHAIRMAN. Well, that's according to Mr. Dredge. Mr. Borders didn't tell anybody——

Mr. AMOROSO. Everything he told Mr. Dredge, as far as I was concerned, proved out as far as what we were doing. I believe it.

The VICE CHAIRMAN. One final question, Special Agent Amoroso. Did you ever discuss Judge Hastings' acquittal on this bribery case with Mayor Clark or Mr. Whittle or Mr. Ferguson?

Mr. AMOROSO. No, I don't believe I ever did.

The VICE CHAIRMAN. Thank you very much.

The CHAIRMAN. Senator Leahy, did you have questions?

Senator LEAHY. I will be very brief, Mr. Chairman, because I know we're going way over time here.

Mr. Amoroso, as I understand your answer in questions asked by Senator Bryan earlier, you said that one of the techniques and one of the purposes of your investigation was—having put pressure on Mr. Borders, was to bring Mr. Borders and Judge Hastings together. Is that correct?

Mr. AMOROSO. Sure.

Senator LEAHY. In fact, at no time in this investigation do we have Mr. Borders and Judge Hastings together, do we?

Mr. AMOROSO. We have them together, but doing what, we don't know.

Senator LEAHY. Well——

Mr. AMOROSO. I think surveillance puts them together in Washington, but——

Senator LEAHY. I understand, but nothing——

Mr. AMOROSO. In recorded conversation, no.

Senator LEAHY. At no time do you have—well, you and I are together in this room——

Mr. AMOROSO. Correct.

Senator LEAHY [continuing]. Without any allegation of any impropriety or anybody else here. But you were never able to get Mr. Borders and Judge Hastings together in a way that you were able to point through objective means to anything improper between the two of them, is that correct?

Mr. AMOROSO. Well, it depends on your interpretation of the telephone call. They talked on the telephone.

Senator LEAHY. Is that the only——

Mr. AMOROSO. I am talking about—if you are——

Senator LEAHY. If you are going to point to some objective thing as a telephone call, is that the only thing you point to?

Mr. AMOROSO. As far as conversation between them that we can introduce.

Senator LEAHY. And you accepted that as open to interpretation, that telephone call?

Mr. AMOROSO. Not my interpretation.

Senator LEAHY. Not your interpretation.

Mr. **AMOROSO**. No.

Senator **LEAHY**. You would say that that would be the proof of the crime?

Mr. **AMOROSO**. Along with the other things that either preceded or followed.

Senator **LEAHY**. But never do you put the two of them together with either the passing of money——

Mr. **AMOROSO**. We never showed money passed, no.

Senator **LEAHY**.—and you never have a conversation between the two of them that you can point to and say this, on the face of it, talks of taking a bribe?

Mr. **AMOROSO**. Other than the telephone conversation.

Senator **LEAHY**. Thank you.

The **CHAIRMAN**. Senator Kerrey?

Senator **KERREY**. Mr. Amoroso, did you know Waxy Gordon?

Mr. **AMOROSO**. No.

Senator **KERREY**. Did you know any other individuals who held an opinion of Mayor Clark that was similar to Waxy Gordon? Did you ever have contact with anyone who——

Mr. **AMOROSO**. No.

Senator **KERREY**. Because it has been represented that Mayor Clark was an individual that, with a little bit of money, could be persuaded to do one thing or another—been represented pretty directly to this committee, not reported in the Miami Herald, not hearsay, but very directly to the committee, in fact joked about pretty openly by the Mayor in front of this committee. You never heard of any such thing?

Mr. **AMOROSO**. I never heard of anybody—you know, I knew nothing about that case, so I don't know.

The **CHAIRMAN**. Mr. Amoroso, Agent Amoroso, let me ask one other question or line of questions here. We had testimony two days ago from Agent Mazzella. You know him, do you not?

Mr. **AMOROSO**. Yes.

The **CHAIRMAN**. The question came up—and this is just on the procedure the FBI uses, just to clarify it in my own mind—the question came up about a conversation he had on the 19th of May with Judge Hastings, where Judge Hastings said, among other things, "Are you investigating me?" And Mr. Mazzella said, "Oh"—he said, "No, oh, no." And then he has testified that, in his view, he was not investigating the judge. That is his view, but, of course, that has been contested as to whether or not in fact he thought he was or thought he wasn't.

But the question that I wanted to get to you, get your view on is a line of questions that Senator Specter put to Mr. Mazzella. He said:

> Special Agent Mazzella, would there be some circumstance where you would feel justified in saying to Judge Hastings that you were not investigating him, in response to his question, when in fact you were investigating him? And the answer was, "That could be a situation as well". That was the answer that was given. And he said, "Under what circumstance could that be your approach?" Mr. Mazzella said, "Probably in those circumstances to see if there might be a possibility of soliciting additional information from a subject or a target, you would not want to disclose that that person is the subject of the investigation."

And then going on, Senator Specter said, "Well, would you consider it proper to say to a man under investigation, in response to a direct question by him, that he was not under investigation, when in fact he was?" And Mr. Mazzella said, "It would depend on the situation, but in certain circumstances I could see where I would not want to disclose the fact that the person is the subject, it just depends."

Is that the FBI policy, that when asked whether a person is under investigation, you will say yes or no, depending on the circumstances, even if in fact the person is not under investigation or is under investigation?

Mr. AMOROSO. I don't believe I know of a policy concerning that area. I think——

The CHAIRMAN. Is there any policy about responding truthfully when a person asks whether they are under investigation?

Mr. AMOROSO. You try to respond truthfully, but I think sometimes you don't know when a guy, an individual becomes a suspect and turns over into being a subject. I mean, there is a very fine line at times, so——

The CHAIRMAN. I can understand that there are circumstances where you wouldn't know for sure whether the person was under investigation. But if in fact you knew he was and you were investigating a person and they said am I under investigation, is there any policy about telling him yes, you are?

Mr. AMOROSO. I don't know if there is a policy set by that. That you would have to ask somebody——

The CHAIRMAN. There is a requirement, is there not, if a person is named as a target of a grand jury investigation, there is a requirement that that person be advised that they are the target of the investigation before they are questioned? Is that not true?

Mr. AMOROSO. Usually, if somebody is the subject of that, you are going to give them the advisor rights form before you start interviewing them.

The CHAIRMAN. So that, in the case where a person is a target of a grand jury, then there would not be the option of lying to them?

Mr. AMOROSO. I don't know what policy is on that. I would assume—here again, I am assuming—I don't know what the policy is.

The CHAIRMAN. It seems to be a fairly basic kind of a thing for FBI agents to know, wouldn't it? I mean, am I wrong in thinking that?

Mr. AMOROSO. Well, you are making a general statement on something that really, in my estimation, is taken on an individual basis. I just—I have been involved in interviewing people, knowing that we've had an investigation on them and that they would probably be indicted, trying to get exculpatory statements from them while you're interviewing. You know, you might want them to say, deny things. It is——

The CHAIRMAN. But is there a point in an investigation where you get to a point where there is an FBI policy that, if questioned by the subject, you will tell them the truth?

Mr. AMOROSO. I don't think there is a policy set down that says that, no. I may be wrong, but that's somebody else higher than I that would have to answer.

The CHAIRMAN. All right. That's all the questions I have.

The VICE CHAIRMAN. I would like to pursue just one or two more on this.

The CHAIRMAN. Senator Specter.

The VICE CHAIRMAN. When you talk about advising of rights, you're talking about Miranda rights, correct, Agent Amoroso?

Mr. AMOROSO. Correct.

The VICE CHAIRMAN. But that only arises in custodial investigation, doesn't it?

Mr. AMOROSO. No, we do that on a lot of instances when we feel that the statement made may be used against the individual and we give them the warning and have them sign it.

The VICE CHAIRMAN. So, you do not apply the Miranda warnings only in terms of custodial interrogation?

Mr. AMOROSO. That's correct.

The VICE CHAIRMAN. But doesn't Miranda only apply to custodial interrogation?

Mr. AMOROSO. That could be correct, but we try to go to the point beyond that in the Bureau, to be put in a position that this statement made by the individual is made with him knowing what his situation is, so we go beyond what is necessary. The Bureau has a habit of doing that.

The VICE CHAIRMAN. When you just referred to exculpatory statements in response to Senator Bingaman's question, you want to get somebody to deny things?

Mr. AMOROSO. Correct.

The VICE CHAIRMAN. You mean you want them to deny things that are true——

Mr. AMOROSO. Correct.

The VICE CHAIRMAN [continuing]. Which is incriminating?

Mr. AMOROSO. Correct.

The VICE CHAIRMAN. Not exculpatory?

Mr. AMOROSO. Well, I meant—I'm sorry, you're right.

The VICE CHAIRMAN. When you answered Senator Bingaman's question by saying that the generalizations were too vague——you didn't say vague, but you responded that Senator Bingaman's question involved generalizations, how about the specific of the telephone questioning, the telephone interview, the attempted questioning by Special Agent Mazzella of Judge Hastings? First, are you familiar with that?

Mr. AMOROSO. No, I'm not, only what you've just mentioned.

The VICE CHAIRMAN. Well, there was a telephone contact by Special Agent Mazzella on May 19, 1986, and it was the subject of some considerable discussion yesterday, and this was in a context where there was an investigation which included Judge Hastings as the person being investigated, and then there was a decision not to follow through on a prosecution, but apparently that was not made until a later time, and it was in that context, where it appeared, from all the evidence we saw, that Judge Hastings was in fact still being investigated, because on May 19th, Special Agent Mazzella sought to question the judge, and then the next day there was a telephone call from an attorney from the Public Integrity Section, a Mr. Holder, so it appears that there was an ongoing investigation and that Judge Hastings was being investigated, and in that context do you think it appropriate for Special Agent Mazzella to have said, in response to a direct question by Judge Hastings—which Senator Bingaman just read you Special Agent Mazzella's answer, was "No, oh, no, you're not being investigated"?

Mr. AMOROSO. Well, I don't know—in the context that you're saying it, my perception is that it wasn't—it was the allegation or whatever that was being investigated, and they were trying to determine if he was involved. So, I don't see anything wrong with what Mazzella did.

The VICE CHAIRMAN. There's nothing wrong with what Mazzella did in that context——

Mr. AMOROSO. Correct.

The VICE CHAIRMAN [continuing]. Where Judge Hastings said—and I am referring now to the transcript—"Are you investigating me?" Mr. Mazzella: "No, oh, no."

Mr. AMOROSO. I think they were investigating the leak, if I'm not mistaken. I may be wrong, but I thought they were investigating the leak and trying to find out, you know, who did it.

The VICE CHAIRMAN. OK. Thank you.

The CHAIRMAN. Are there any other questions by the committee?

[No response.]

If not, is there any reason this witness cannot be excused?

[No response.]

Mr. Amoroso, you are excused. We appreciate your testimony very much.

Would the Respondent please call his next witness.

Mr. ANDERSON. The Respondent calls James Gunn.

HOUSE MANAGERS MOTION TO EXCLUDE THE TESTIMONY OF JAMES GUNN

Mr. BARON. Mr. Chairman, before the witness is sworn and his testimony is taken, the House would like to be heard on a motion to exclude his testimony because we think that this evidence is improper, and it was excluded at the criminal trial. We would like to be heard on it.

The CHAIRMAN. Why don't we go ahead and hear both counsel on that issue and then, before we swear the witness and proceed with any testimony.

Mr. Gunn, perhaps if you could just be seated here while we have the legal argument before we get on with your testimony and before we determine whether to do that.

Mr. ANDERSON. Mr. Chairman, I might make a proffer which will make it easier for Mr. Baron. I'm not sure what he is aware of. He's quite correct——

Mr. BARON. Can I ask that the witness be excluded?

The CHAIRMAN. Yes, that's a reasonable request.

Mr. Gunn, we would ask if you would step outside until we get this legal argument behind us. Thank you.

Mr. Anderson, why don't you go ahead.

Mr. ANDERSON. I may be able to alleviate the House's concern. Mr. Gunn was called as a witness at Judge Hastings' trial concerning rainmaking activities in south Florida. Unless the committee chooses to go into that, in light of the Chair's remarks the other day while Judge King was on the stand, we do not plan to open that now. But he is also familiar with the local political scene in Florida, in fact knows Glenn Whittle, Mayor Clark and other people.

So, in view of that, I had not—the Chair, when I was going into that with Judge King, indicated that he thought the committee could take notice that these kinds of things happened. In view of that and in view of the ruling of the Chair, I don't plan to probe that particularly with Mr. Gunn.

I will tell you, he is a garrulous witness, so I may have a hard time controlling him, but he has knowledge of Mayor Clark, Mr. Whittle and other events here, and I think his testimony will be helpful.

The CHAIRMAN. Is he being offered as a character witness for Judge Hastings, or what is he being offered to the committee to support?

Mr. ANDERSON. Mr. Chairman, let me tell you, on my direct, I don't intend to probe that, other than to lay a foundation that he knows him and then bring out some of his general knowledge about Mayor Clark, Glenn Whittle and their thing. He is a very garrulous man, and if anyone asks him his opinion, he will give it. He is not being offered as a character witness, he is being offered as a witness on matters that go I think probably more to Article 16.

The CHAIRMAN. Does he have any knowledge of the matters that are being contested here before the committee?

Mr. ANDERSON. Yes, sir, he does. He will testify, if I can get him to the point, for specific occasions on which he was present, at which either Mayor Clark or Glenn Whittle were present, when they discussed Judge Alcee L. Hastings.

The CHAIRMAN. Counsel, why don't you go ahead and make your objection.

Mr. BARON. I arose to address this issue because, when Mr. Gunn attempted to testify at the criminal trial, his testimony was characterized by Judge Gignoux—who, I think it is fair to say, is one of the most respected trial judges in the Federal system—as the most outrageous testimony he had ever heard. So, if it is going to come anywhere near what he testified to at the trial, we would move to exclude it, and I would be perfectly happy to proffer as to what he did attempt to testify to at the trial. Not one syllable of this man's testimony was allowed into evidence at the criminal trial, and he was as witness for the defendant, so the judge would be leaning over backward to accommodate the defense.

Now, as far as—I don't understand what the purpose is in coming in here to talk about Mayor Clark. I mean, is this to impeach their credibility at this point? I don't even understand what the relevance is of now why he is being proffered. This is—I just don't understand why he is being brought in here at all. Those witnesses have been cross-examined, that has all been gone into thoroughly. I don't understand why he is here. But if he is going to get into anything remotely like his testimony at the trial, we are going to move to exclude it.

The CHAIRMAN. Counsel, I understand that the representation of Mr. Anderson to the committee is that he is going to question the witness about what the witness heard in meetings involving Mayor Clark and some other individuals, where they were discussing Judge Hastings.

Mr. **Baron**. It has to be hearsay. I mean, even on the basis of that proffer, it is cold hearsay, unless it is not being offered for the truth.

Mr. **Bryant**. Can we also observe that when this witness was added to the list and was proffered as a possible witness, there was no mention made that this witness would be brought forward for this purpose. This is the first we have heard of this.

Senator **Leahy**. I'm sorry, the buzzer cut off the last part, Mr. Chairman, I didn't hear what Mr. Bryant said.

Mr. **Bryant**. At the time that the Respondent finally came forward with a witness list, with a statement with regards to what he intended to use these witnesses to show, he never mentioned that he intended to use this witness for that purpose.

Mr. **Baron**. I believe he was put on the list based along the lines of what he attempted to testify to at trial, and that is why we arose to object to it.

Mr. **Anderson**. Mr. Chairman, may I respond?

The **Chairman**. Yes.

Mr. **Anderson**. First of all, Mr. Gunn has been carried forward since our preliminary witness list; secondly, as Mr. Baron observed, that he was called as a witness at trial in 1983; thirdly, the House has had the subpoena powers of the investigating committee and everything since the outset.

I, frankly, learned about the additional information from Mr. Gunn in the course of interviews which preceded my flight up here. We probably would have had the argument that Mr. Baron suggests over whether rainmaking activity generically is relevant in these proceedings, had the Chair not indicated—and I think correctly—that that is something people know is out there. This information came to me.

I, frankly, have not had the subpoena power at any point in time over the past five years. A whole lot of people are coming out here who I have not talked to, had under my gun sights. If I can bring forward a couple of people that the House missed, I really don't feel I'm taking any unfair advantage and I do it with a smile.

The **Chairman**. Mr. Anderson, let me just do this: Your earlier witness list indicated that he would be proffered as a witness with knowledge of rainmaking, and——

Mr. **Anderson**. And other matters, I believe.

The **Chairman** [continuing]. And other matters.

Mr. **Anderson**. I would represent to you that I learned in the course of, I think it was the week before I came up here, it may have been the second week before I came up here, Mr. Gunn came forward and told me that he also had some additional information.

The **Chairman**. Well, let me rule this way, that Mr. Gunn can be called as a witness for the limited purpose of testifying about knowledge he has about Mayor Clark's state of mind or the incidents immediately surrounding this allegation which make up article 16, but not for the purpose of general testimony on rainmaking, and I think that should make it clear.

Mr. **Bryant**. Mr. Chairman, in that case, we would like to ask for a recess in order that we might have the opportunity to figure out what this is about. We never realized that this witness was going to be offered for this purpose until this moment. We have had no notice of it and, accordingly, we are not prepared.

Mr. **Anderson**. Mr. Chairman, just let me respond briefly.

The **Chairman**. Mr. Anderson.

Mr. **Anderson**. I recall distinctly at one of our prehearing conferences, Mr. Baron and the managers urging that they should be permitted to take a deposition, because they would never want to put a witness on the stand they had not had an opportunity to depose. I think I said, with a smile, I would like to prepare for this trial that way, too.

I haven't had the subpoena power, and there are an awful lot of people sitting up here who I have had to hunch it out as to what information we might be able to get and glean it from prior records. I'm sorry, trials are things that involve surprises and that's life. I don't object——

The **Chairman**. Do you have another witness that you could call at this time and have Mr. Gunn come on after lunch, Mr. Anderson?

Mr. **Anderson**. We could call one additional witness, Dr. Roy Phillips, who will be a brief occurrence witness from the thing, if that would be——

The **Chairman**. Why don't we have Mr. Phillips or Dr. Phillips called at this time and the House counsel can visit with Mr. Gunn over the lunch hour and question him, and we will then expect to have him at 1:30.

Mr. **Bryant**. Mr. Chairman, we would like to have it plain in the record, because we are weary of the tactics of the Respondent, he just stated that he had this knowledge about Mr. Gunn three weeks ago and did not notify the House of that fact and, rather than do so, let his original characterization of Mr. Gunn in the record stand. We find that to be just absolutely improper behavior in the course of a proceeding like this.

Now, the Chair has ruled and I am not asking for a different ruling, but we want to make clear our very strong objection to the tactics of the Respondent.

Mr. **Anderson**. As a matter of personal privilege, I request the right to respond.

We put down witnesses and asked the House to call them and we have not had the subpoena power, we have not had the power to get at witnesses except as they informally came forward. There are a lot of witnesses out there. I do not view it as my obligation, representing a respondent in what I view as essentially a criminal matter, but certainly is a respondent where rights are at stake, has some duty to volunteer to the prosecution in advance, so it can happen.

You have witnessed in this case the name Kobetitsch, was stated by Judge Hastings. One day later, you had an FBI agent who had overnight found out what the answer was to the Kobetitsch problem. I do not trust counsel for the House any more than they trust me, and that is where we are at trial.

The CHAIRMAN. Counsel, we have already ruled that we will hear from Dr. Phillips now, if you can bring him forward, and we will hear from Mr. Gunn for the very limited purpose of supplying relevant testimony on what the Mayor had in his mind during these proceedings.

Mr. ANDERSON. Mr. Chairman, in order to assure that that happens, may I lead Mr. Gunn when he is called? I will tell you, he is a very garrulous man.

The CHAIRMAN. You may lead the witness when he is called to an extent. Obviously, you cannot testify through the witness.

Mr. BRYANT. Mr. Chairman, if that is to be the ruling, again, I would plead for the opportunity to make a comment on it before the ruling is made. He has asked for the right to lead the witness he's calling. We have objected to him being called. He is not a hostile witness.

The CHAIRMAN. Counsel, we have had enough argument on this. If you would be seated, we could call Dr. Phillips forward, please.

Dr. Phillips, would you come ahead?

Mr. ANDERSON. Ms. Williams will examine Dr. Phillips.

The CHAIRMAN. Would you raise your right hand, please?

Do you, Dr. Roy Phillips, swear and affirm that the evidence you shall give in the case now pending between the United States and Judge Alcee L. Hastings shall be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. PHILLIPS. I do.

The CHAIRMAN. Please be seated.

TESTIMONY OF ROY PHILLIPS

DIRECT EXAMINATION

Ms. WILLIAMS. Mr. Chairman, as a courtesy to the House managers, let me tell them that this witness is very, very brief.

Dr. Roy Phillips, good morning. Dr. Phillips, how are you employed?

Mr. PHILLIPS. I'm employed by Miami Dade Community College.

Ms. WILLIAMS. And in what capacity?

Senator LEAHY. Would you take the microphone, please?

Mr. PHILLIPS. I'm employed by Miami Dade Community College, in the capacity of Vice President for the Homestead Campus at this time.

Ms. WILLIAMS. All right. Now, in 1985, were you affiliated with the Metropolitan Miami Action Plan?

Mr. PHILLIPS. Yes, I was.

Ms. WILLIAMS. How were you affiliated with it?

Mr. PHILLIPS. I served as the Chairperson for the Economic Development Action Committee.

Ms. WILLIAMS. Were you present at the annual convention of MMAP in September 1985?

Mr. PHILLIPS. Yes, I was.

Ms. WILLIAMS. Do you recall Judge Hastings being the guest speaker?

Mr. PHILLIPS. Yes, I do.

Ms. WILLIAMS. Do you recall—you were present when he spoke, is that correct?

Mr. **Phillips**. Yes, I was.

Ms. **Williams**. Do you recall where Mayor Clark was seated during Judge Hastings' speech?

Mr. **Phillips**. I do.

Ms. **Williams**. Where was he seated, sir?

Mr. **Phillips**. I recall that Mayor Clark was to be a recipient of an award to be given by MMAP, and he was sitting right near on the front row of the seat.

Ms. **Williams**. And where were you seated?

Mr. **Phillips**. I was seated on the opposite side, kind of in the third row, on the opposite side, kind of in the middle.

Ms. **Williams**. Now, when the judge concluded his speech, what did you do?

Mr. **Phillips**. Well, one of the things that happened after the speech was over, we were actually called to the stand because we had to have an interview then and I went up to shake hands with the judge, but at that time the judge was being escorted out of the rear.

Ms. **Williams**. You saw the judge being escorted out of the rear?

Mr. **Phillips**. Yes, I did.

Ms. **Williams**. Now, are you familiar with Judge Hastings' reputation in the community?

Mr. **Phillips**. I am.

Ms. **Williams**. And what is that reputation, sir?

Mr. **Phillips**. He is a very respectable man, in my opinion. I don't know him personally, but I have been in his company in terms of social events, and I find him to be a very respectable man.

Ms. **Williams**. Thank you. Continue to speak into the microphone.

Mr. **Phillips**. Thank you.

Ms. **Williams**. Thank you very much. Nothing further.

The **Chairman**. Is there any cross-examination of the witness?

Mr. **Bryant**. No cross.

The **Chairman**. Does anybody on the committee have any questions? Yes, Senator Leahy.

EXAMINATION BY THE COMMITTEE

Senator **Leahy**. Just so I understand, where was the mayor sitting?

Mr. **Phillips**. As I recall, the mayor was sitting in the very first row, and in front of the podium, kind of like this. There were a row of seats. Actually, there were three rows. There was a row on this side where I was sitting, in the middle, and there was a row on this side. He was sitting in the very front.

Senator **Leahy**. Middle?

Mr. **Phillips**. Right. As I recall.

Senator **Leahy**. And how far from him was Judge Hastings when he was speaking?

Mr. **Phillips**. I would say probably somewhere between here—from this here to about where you're sitting.

Senator **Leahy**. Maybe about five, six feet away.

Mr. **Phillips**. Probably, I would say somewhere in that area. But he was on a raised podium.

Senator LEAHY. I understand. And how far were you from the mayor where you were sitting?

Mr. PHILLIPS. I was sitting on the right-hand side, kind of in the third row. He was in my view.

Senator LEAHY. Now, you said after the speech was over you went up to speak with Judge Hastings.

Mr. PHILLIPS. I went up to shake his hand because we were being called——

Senator LEAHY. You shook hands.

Mr. PHILLIPS. Right. But I didn't have an opportunity to do that.

Senator LEAHY. Was he in your sight all the time as you——

Mr. PHILLIPS. Yes, he was.

Senator LEAHY. And is my understanding correct that at no time did you see Judge Hastings talk with the mayor?

Mr. PHILLIPS. I did not.

Senator LEAHY. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Any other questions by the committee?

[No response.]

The CHAIRMAN. If not, is there any reason this witness cannot be excused?

[No response.]

The CHAIRMAN. We appreciate your testimony. You are excused.

Mr. PHILLIPS. Thank you very much.

The CHAIRMAN. Thank you.

[Witness excused.]

The CHAIRMAN. Do I understand, Ms. Williams, that the respondent does not have another witness at this time available to offer?

Ms. WILLIAMS. That is correct.

The CHAIRMAN. Do we have the videotape? Is it your intention today to show the videotape of testimony by Margaret Dabreau Owens?

Ms. WILLIAMS. That is correct.

The CHAIRMAN. Do you object to that being done at this time?

Mr. ANDERSON. Not at all, Mr. Chairman. We hope to bracket it with her sister's testimony, but I think that would be a good use of the time if it can be done now.

The CHAIRMAN. Could we have that done?

Mr. ANDERSON. I had told Mr. Harvey that we wouldn't do it this morning, so it's our fault, not his, that the equipment's not here.

The CHAIRMAN. Let me ask, there are two items that I'm aware of that still need argument that are of a somewhat procedural nature, but we wanted to ask counsel to argue them before the full committee before we deliberated and ruled on them. One is the admissibility of the charts that the House has proffered into evidence. Not the large charts. I think we agreed that those would not be admitted themselves, but they could be used if the small charts are admitted. Mr. Anderson had said earlier that he had objections to the admission and would be in a position to specify those objections. That's one procedural matter.

The other is the motion to strike the proffer of evidence on polygraph matters that the House had earlier made. Are we to a point where we could usefully take the time of the committee to hear those arguments?

Mr. ANDERSON. We can do that, Mr. Chairman. I would—and I will leave this to the pleasure of the managers. I am reminded Eleanor Golar-Williams, who was originally on their list but was admitted through prior, is present and would be a very short witness if we didn't want to take that now. So either the argument or Ms. Golar-Williams, we could call.

The CHAIRMAN. Why don't we hear the argument on these matters if the House managers are prepared?

Mr. BRYANT. We're prepared with regard to the charts, Mr. Chairman. We'd like a few minutes before we take up the polygraph matter since our materials are not in the room.

The CHAIRMAN. Why don't we go ahead, then, and hear the argument on the charts? Then we could call Eleanor Golar-Williams as a witness. And if we still have time before lunch, we could see the videotape or hear this other argument.

Why don't we go ahead? I guess the House managers should go first on the issue of the admissibility of these charts, indicate why you believe they're admissible. If you'd like to use the podium, feel free to do so.

Mr. BRYANT. Mr. Chairman, we were uncomfortable with having to contend with the constant changes and appearing to be contentious, but we're not prepared to go forward with Eleanor Golar-Williams. That is a witness who has been assigned to Mr. Fish. We were relying upon his earlier representations with regard to the order and then the ones that he gave the Chair this morning. She is listed as next to the last on the list, and Mr. Fish is not planning to be here until after lunch. He is the ranking member of the Judiciary Committee. The Judiciary Committee is presently marking up a number of matters, including the flag issue. All of us have absented ourselves from the Judiciary Committee proceedings anyway, but he can't do that. He won't be here until after lunch.

The CHAIRMAN. In deference to Mr. Fish, Representative Fish, we'll be glad to go ahead and wait so that he can participate in that examination. But if you would go ahead with the chart argument, we'd appreciate that.

Mr. ANDERSON. Mr. Chairman, one logistical thing. Could we ask that the two master chronology charts be set out? Because when I do make my argument, I will want to refer to them, point to them.

The CHAIRMAN. Could the clerk or somebody bring those forward and prop them up so we can see what we're arguing about?

[Pause.]

The CHAIRMAN Why don't you proceed, Representative Bryant?

ARGUMENT RE: ADMISSIBILITY OF HOUSE EXHIBITS 1A, 1B AND 1C

Mr. BRYANT. Mr. Chairman, the House managers urge the committee to accept into evidence the small reproductions of House Exhibits 1A, 1B and 1C. These exhibits are the small version of the three charts used by the House managers during their case in chief on the bribery conspiracy and false testimony charges.

I want to make clear that during our direct case, we submitted evidence supporting each and every one of the entries on the chart. In other words, every single entry has support in the record, whether it came in through testimony, a document, or a stipulation.

I have in my hand a list which sets forth how each entry was proved, and the House is happy to submit this list to the committee if it so desires and to provide a copy to counsel for respondent.

Mr. Chairman, the issue before the committee is not whether each item on the chart has been proved beyond all doubt. The issue is not whether the respondent may submit evidence during its case which gives an alternative explanation for why events happened the way they did.

Rather, the issue is whether the House has put into the record evidence that supports the items on the charts. The charts are demonstrative exhibits. In any civil or criminal case, a party is allowed to submit into the record an exhibit that sets forth in demonstrative form the evidence that it presented during its case. If, in fact, respondent had a chart of all the National Bar Association events that took place in 1981, we would not object to the admission of that exhibit if all the entries on the chart had support either through testimony or a document received into evidence by the committee.

The point that I am making is that our charts reflect the evidence put into the record by the House. It is for each Senator to determine what weight to give each entry. But the charts themselves are proper demonstrative exhibits. They should be accepted into the record because each entry on the charts has a basis in fact.

In addition, Mr. Chairman, if you study the charts, you will see that the House has been careful not to be argumentative. For example, on October 9, 1981, the chart does not read, "Judge Hastings flees from Washington, DC." Rather, the chart states the facts: "At 6:30 p.m., Judge Hastings is scheduled to depart BWI. At 8:30 p.m., Judge Hastings is scheduled to arrive Fort Lauderdale."

In short, the committee should admit into the record the small reproductions of House Exhibits 1A, 1B, and 1C which were referred to during the course of the testimony.

The CHAIRMAN. Mr. Anderson, did you wish to be heard in opposition to the admission of this chart?

Mr. ANDERSON. If I might, Mr. Chairman.

For convenience, if I might address the committee, I'll try and keep the microphone here so I can refer to the chart.

The CHAIRMAN. Let me be clear on the nature of your objection now. There are several large charts that have been referred to and offered by the House, and as I understand it, your objection goes to this master chronology and only that.

Mr. ANDERSON. Only to the master chronology.

The CHAIRMAN. And the others, there is no objection. Is it clear on the record that the others have been admitted?

Mr. MCGANNON. No. The events of October and September.

The CHAIRMAN. The 5th of October and the 5th of——

Mr. MCGANNON. The telephone conversations have been. The activities, the dates.

The CHAIRMAN. The large charts showing activities on different dates have not been admitted as yet, but as I understand, counsel, there is not an objection to that. There is an objection to the master chronology; is that correct?

Mr. **Anderson**. That is correct, Mr. Chairman.

The **Chairman**. Well, on that basis, with that representation, we will admit into evidence the small versions of the list of items, not this master chronology but the list of activities. And what are the exact dates of those lists of activities back there?

Mr. **Anderson**. I think they're from September through October.

The **Chairman**. September 1981 list of activities. House Exhibit 1B is September, and House Exhibit 1C is October. Those will be admitted.

[The documents referred to were marked House Exhibit Nos. 1C and 1B and were received in evidence.]

The **Chairman**. If you would proceed.

Mr. **Anderson**. Mr. Chairman, there is much in what Mr. Bryant says that I don't disagree. Charts and summaries and such, as I understand their purpose, are admitted to aid the trier of fact, to eliminate the need to, for example, go into detail such as reading long-distance telephone records and message slips, to enable to put together constructs. I do not quarrel with that problem.

On the other hand, there is at some point at which a demonstrative exhibit crosses over the line from, in effect, a testimonial summary of complex materials into pure argument. And in that sense, it has what a lawyer would call I suppose an improper prejudicial effect that outweighs its value. Dr. Shuy might call it a contamination.

I think quite clearly this master chronology strays into that area. What I would like to do, rather than going detail by detail—although I'd be happy to do some of that, too—is focus on one event to show you how I believe this committee in its own examination of witnesses has been misled by an entry.

Let me start with you, and I will try and keep up my voice. Let me go over and just guide you a bit. You'll recall that when Mr. Sonnett testified, there was a great deal of conversation and questioning about whether either of them recalled Mr. Sonnett having given advanced notice to Judge Hastings's chambers or anyone with regard to the continuance that was granted on May 11th. There's no question; there was a continuance, that was the focus.

Now, how in this case did May 11th and those events become a major focus? This entire chronology depends upon that entry, that some time in early March William A. Borders asked Dredge about the Romanos. Now, I concede that there was before this committee direct evidence that in March 1981 I distinctly recall that at Joe Nesline's apartment I met Bill Borders; John Shorter was playing poker with Joe Nesline, and I recall distinctly that we do. Fair enough. That's direct evidence.

But you'll also recall you have before you in evidence some prior assertions. You have Dredge 1981 through Mr. Murphy's telexes, Dredge told us he'd known Borders for years. You have at the Investigating Committee level in the transcripts Dredge not recalling very much, but to the extent he could recall, before he began getting leading questions and having his recollection refreshed, he said with varying degrees of certainty, "I met William Borders some time between the date on which I was indicted and the date of my arrest." We know objectively April 29th was the date of Mr.

Dredge's indictment in Baltimore; May 11th is the date of his arrest.

You have a problem with a witness who, in my view—although I am not a psychiatrist—is a sociopath. He will tell whatever story suits his purpose on the occasion. In 1981, let's make a deal. Only way to get out on a major drug deal is to satisfy the FBI I got the goods on a big fish, a Federal judge.

In 1985, they promised me I'd never have to testify. Only way to serve my interest is to have a recollection that is virtually non-existent and avoid the possibility of a perjury or some kind of testimony.

In 1989, Hastings has brought me out of the shell and forced me to do this. The only people with power that I would be at risk at potentially are people who hold the power of contempt. What do we want to do with this?

I impugn no one's integrity in that process. I'm simply—I do impugn Mr. Dredge's integrity. But I emphasize we have three different versions. What is the extrinsic evidence that bears upon this? We know that, according to Mr. Dredge, Mr. Nesline introduced them. The first extrinsic evidence of any contact between Dredge and Borders is April 9th on the message pad. Nothing back in March.

We know the first evidence of communication extrinsically that we have between Mr. Dredge and Mr. Borders is May 5th. Borders calls down and leaves with Eastern Airlines Dredge's number in Miami as a contact number. We know that from May 5th onward, there is a regular pattern of contact evidence in the long-distance telephone records and the message pad between Dredge and William A. Borders, between Nesline and Borders, between Dredge and Nesline. Nothing before in this crucial period, a regular pattern. July 20th, the pattern is shown by extrinsic records.

The Vice Chairman. Counsel, may I ask a question at this point?

Mr. Anderson. Yes.

The Vice Chairman. The thought occurs to me that perhaps your concerns might be accommodated, if it can be worked out, if there was to be a notation on the issues which are contested with references to where the counter-facts might be readily found. Your objection, as I understand it, goes to having this appear to Senators who review it as if it is all uncontested fact. And it really isn't, but I can understand your concern that people might think it is without knowing the details as those of us who have been here do with those who are not present. I'm just wondering if that might accommodate your interest. It would give the House managers the advantage of having a chart which is helpful in depicting the entire picture, but I understand that you want a red flag that other factors ought to be looked to, other evidence on the issue of contesting some of these matters.

Mr. Anderson. Mr. Vice Chairman, my concern is really a picture in many respects is worth several thousand words. I really do not have a problem—and I think the Chair and the committee have ruled correctly in terms of producing this before the full Senate where people can point out and I can submit to Senators the arguments I'm making to you now in light of the evidence they have heard.

My problem is by putting up—I do not, frankly, have access to the kind of graphics that the House does. I couldn't reconstruct this. I could, I suppose, do a footnoted version at some time where I could footnote each of these entries. But if we are offering this as an aid to the jury rather than a confusion—law review articles tend to confuse many readers because they have more footnotes than they do words, and many people, unless you happen to be in that particular jargon, you tend to think, well, I can skip the footnote. Well, some legal scholars, at least some of my colleagues today, say all the interesting stuff is in the footnotes and you can skip the text.

My problem is this will be the graphic. It will leap off the page. It will jump off the page to a Senator. They'll open it, Aha, here it is, here's the case, we've got it in a glance now, we can just track this down. And I submit it's happened here.

If you will recall your own questions, there has been a serious assumption that we're talking about the continuance on May 11th, because Mr. Dredge has said it's a *sua sponte* continuance, my God, there's only one continuance in the whole case, therefore we must do that. Mr. Dredge, who testified he spent 18 hours reconstructing his recollection before his appearance here, going over documents, now has a memory that enabled him to account for the intervening meetings to make the May 11th possible.

If you look at the extrinsic evidence, we have something in late April or May, in the beginning time, and lo and behold you wind up with July 8th as the date on which Judge Hastings, far from granting a continuance, sentences the Romanos to three years in the slammer. And 20 days later, you have Mr. Dredge coming in playing let's make a deal. I submit it is equally consistent with the evidence that Dredge, who thought Mr. Borders was blowing smoke, on July 8th received confirmation when he learned that Dredge couldn't even effect a continuance, and he promptly said, Oh, boy, I know how to use this, and came down to the United States Attorney's Office.

My concern over this exhibit is that tends to mask that and puts the burden of proof on the respondent to come in, even with new graphics, which frankly I don't have the capacity to generate, or to leave the full Senate, as this committee has tended to be, focusing on an event as though it were carved in stone rather than an event that was carved upon the testimony of a liar.

Now, the consequence of this kind of problem is much of this would disappear, even under the broadest standards of relevance, if that is not an established fact. If you don't have that contact, what does it matter? You have other conflicts here which tend to camouflage it, the May 10th thing itself, if we could look at that. Dredge's arrest is May 10th at 5:38 p.m., WAB to Dredge. Well, that may be Mrs. Dredge, but Dredge was in jail. The inference there is that the day they talked about the continuance. The fact there is that Mr. Dredge had been arrested and was in the slammer. That conversation at 5:38 could not have been between WAB and Dredge. There is a record of a call from Borders' phone number to Dredge's phone number, but unless you disbelieve the DEA and the rest of these things, Dredge isn't on the receiving end of that.

The implication is here is a time when the conversation took place, Mr. Dredge so testified, I talked with William A. Borders on May 10th. That's the date he told it to me. It conflicts with the evidence in this report.

Now, it would take a very sophisticated, I think, juror analyst to pick that out themselves if they're cross-referencing back to Dredge's testimony and what's in the phone records. This is not an aid to the jury. It is an aid to predisposing the jury to I don't have to read the telephone records because everything's here with a particular view.

I submit that the prejudice of putting it in your books significantly outweighs any value it could have as an aid to the Senators who have to study serious issues in serious detail. I have no problem if the House is willing to come forward and as they stand before the Senate and as I stand before the Senate and let me replicate this chart, we'll have this replication to you before a group of Senators who have studied and had their staffs studied and do these kinds of analyses, I'd be delighted to do it. I hope they do. But I really am concerned, as I try to visualize those green volumes with having this be House Exhibit 1A because I fear that many Senators—and I do not mean to—I realize how busy you all are and how heavily dependent on your staff. I view that some staff and others will open it, uh-oh, here we are, master chronology, that's carved in stone. Now let's go look and see what the dispute is about, and that they will say, well, yes, do we really believe Mr. Miller and Mr. Sonnett on their recollection on this. Maybe the judge did know the continuance was coming so we can just get out the *sua sponte*—is it July 8th? Is it May 8th? Or is it simply that Mr. Dredge knew—you'll recall Mr. Sonnett said, "Some judges have suggest I specialize in continuances." It would not take a very sophisticated criminal to know that if you're struggling, why did you think Borders had any power, to say, well, there was a continuance in the case. I think if you go through most criminal cases in most jurisdictions, you'd find one or more continuances.

This data has been reconstructed. I don't question the managers' right to argue it. I do not believe, especially in the context of Senators who will not have sat and heard the evidence, the contemporaneous argument, this is not an aid. I think it is unfairly prejudicial because it lays out as though it were the view of the chronology of events something which is highly prejudicial, and at least from this point onward totally dependent on the testimony of man who sold out his friends, Mr. Borders. He lied well enough to gain Mr. Borders' confidence, lied well enough to gain Agent Murphy's confidence.

I just don't think that is fair, and I do object to it on that ground.

The VICE CHAIRMAN. If I might just say one more thing, Mr. Anderson, it may disadvantage the defense in the context of making it difficult for Senators to really understand this massive case. Perhaps if it's not understood, that may inure to the detriment of the House managers who have the burden of proof. But it seems to me that you start with a chart which boils down a lot of the matters as to what the House considers most important. Perhaps the chart ought to be denominated differently. Perhaps it ought to be, instead of master chronology, it ought to say argument on master chronology.

We can discuss what impact footnotes have. Personally, when I turn to a page and have text on both sides and a footnote, I'm always looking at the footnote first. But if you were to summarize your factual objections to what appears there—and there is more to be said on both sides than what you have represented. You can't characterize it all. Then the House managers put a reply into what you have said. That might be a very good way in a shorthanded version for Senators to really understand what this case is about.

Mr. ANDERSON. Can I just respond briefly? Because I agree with you. I think this document, if they wish to reproduce it and place it in, I assume we will be invited to make some sort of post-trial briefs or arguments. To put it in a brief that is labeled "Brief on Behalf of the House managers" or "Brief on Behalf of the Respondent," alerts every Senator. You're now listening to argument. I would hope by that time I may have my own chronologies, my own—I won't have the graphics, but at least I can lay out the events. And the briefs are likely to be bound in the same green volume, so you will read argument on behalf of the managers, argument on behalf of Judge Hastings, reply. That will put it into focus, and I would have no problem with anyone producing anything that they want to say the evidence shows in a brief.

My concern is when you call it really what you said, Senator. When you dignify it by calling it evidence as opposed to argument, and by including it in the exhibits, you give it a status that it should not have. If you print it as an appendix to a brief, I have no problem with that. I think that's fair argument. I think if that is their theory of the case and the one they wish to push, a totally fair argument.

What I'm trying to do is get it in the argument segment of this case and keep it out of the evidence segment. And I think it's unfair to label that evidence.

The CHAIRMAN. Senator Leahy had a question.

Senator LEAHY. It's not so much a question, Mr. Chairman. I'd just make an observation really to the Chair.

I respect Professor Anderson's concerns. If there is an item that's put on as though it may be a fact, which he's going to contest, I should think that would be easy enough to footnote those. Looking at this thing, there are a lot of those, an awful lot of areas on there that are not in dispute. Whether we have this chart or not, those of us who sit on this panel are going to have written up something like this ourselves. It probably won't be as neatly done, but it will be all the main points as we try to make our own decision as we have to present it to the rest of the Senate.

I really don't see what the fuss is. I would suggest one of two ways: either this goes in with asterisks or footnotes pointing out those areas that respondent disagrees with; or the House puts this in as their argument and the respondent puts in, if they want something entirely different as their argument.

The CHAIRMAN. Let me just advise the committee it would be my intention to have us deliberate on this ourselves in closed session and make a decision at that time. So I don't think we need to make a decision now.

If there are questions, additional questions either to Representative Bryant or Mr. Anderson, this would be an appropriate time to put those questions.

Is there anything more that you wish to say, Representative Bryant?

Mr. **Bryant**. Mr. Chairman, I want to draw the committee's attention back to what this is. There is no civil or criminal proceeding in which demonstrative evidence which is supported by the evidence which has been offered into the trial court's record is not permitted. Every one of the entries on this chart reflects evidence which we have offered. Now, it's evidence which he has the right to argue if he chooses or place a different interpretation on, but this is an accurate representation of all of the evidence which we have offered into this case. That is to say, everything on it reflects evidence we have offered into this case.

The only issue that I would emphasize, we were asked ahead of time, not in the course of arguing this motion, to go through every one of these entries in the form of a major closing argument. So we did not do so. The only issue is whether the House has put into the record evidence that supports each item on the chart, and the only proper argument with us would be to say for the respondent to point one of them out and say there's no evidence that supports this particular entry, or to argue that one of the entries, in fact, is not a simple statement of what the evidence was but is itself argumentative.

The respondent has not quarreled with the fact that any of these entries is supported by evidence we have offered, nor has he stated, nor could he state that any of them were argumentative. I made the point in the beginning that we have purposely not done that.

The **Chairman**. I believe Senator Rudman had a question.

Senator **Rudman**. I just want to comment to Congressman Bryant. I understand what you're trying to do, but I would just make the point—we're going to have to decide this, but to show you at least how I'm thinking. You're right as far as it being allowed in any criminal trial. And everybody would be there for the whole trial and would have seen everything, heard everything, heard the argument.

The problem I have with it, unless we find a good way to do it, is I think Mr. Anderson makes a good point in this sense: The real world says that after we're done and we do our report, this is going to go to the Senate in a very voluminous kind of a report. And I know from the Claiborne experience that people are very diligent. But you've got to be very careful in how that report is prepared to make sure there's nothing unfair within the four corners of the report in the sense that people could misconstrue it. I think that is Mr. Anderson's concern, as I understand it. I share that concern because the members of this panel are going to eventually, in a closed session of the Senate, be the source, if you will, for our colleagues who are going to ask us what this means and what that means. It's very important that they don't get confused by something that, at first blush, would appear to be something that everybody agreed to.

I think that's Mr. Anderson's problem. We have to find our way around that and preserve your right to have us look at a chronology as you represent it. But how that's presented in fairness to this respondent here is very important.

Mr. **Bryant**. Let me suggest that a simple answer would be to add to this label House master chronology or master chronologies of evidence offered by the House.

Senator **Rudman**. I would hope that during the lunch recess maybe you and Mr. Anderson, as you do in a normal situation, could have a discussion about this between counsel. There seems to be more than a veneer of comity between the two of you in the last two weeks. You seem to be able to talk to each other. So maybe you can work it out and save us the problem.

Senator **Leahy**. Mr. Chairman?

The **Chairman**. That's a constructive suggestion.

Senator Leahy.

Senator **Leahy**. Mr. Chairman, I just noticed that one item is covered up. I assume that's just a mistake.

The **Chairman**. Is there an item that the House——

Senator **Leahy**. I would just say, if we're going to be arguing about something, I don't want to have to go back to the whole argument again just to get that one item uncovered.

The **Chairman**. In mid-June, there's one item that has not been uncovered. Is there a reason?

Mr. **Bryant**. No reason at all.

Mr. **Anderson**. Mr. Chairman, just briefly?

The **Chairman**. Why don't you make your point briefly? We've heard substantial argument on both sides of this.

Mr. **Anderson**. My only point is a point of law. I'm not sure whether there's an understanding. I quite agree with Mr. Bryant. In criminal or civil cases, summaries supported by items of evidence are admissible. They are only admissible at the discretion of the fact-finder, and the discretion is to be exercised in terms of will this aid the jury, is it a fair and correct summary that is likely to aid the jury, or is it likely to have what we call in a trial improper prejudice. This is in your discretion. It is not just because I touched all the bases, bingo, I get it.

The **Chairman**. We are now, I gather, about seven or eight minutes before 12:00. I'm informed that the videotape of Margaret Dabreau Owens is available to be watched, but it will take 17 minutes. Since we've advised all Senators that we'll recess at 12:00, I think we'd probably better put that off until after lunch at this point.

We will recess now until 1:30, and at that time go forward with the testimony of Mr. Gunn.

[Whereupon, at 11:52 a.m., the committee recessed, to reconvene at 1:30 p.m., this same day.]

AFTERNOON SESSION

The **Chairman**. The committee will reconvene.

We are advised that the House managers are occupied with a vote or several votes at this time. But it would be our intention to go ahead, and I think everyone was advised right before lunch that we would begin with the videotaped deposition of Margaret Dabreau Owens being shown to the committee at this time.

Did either counsel have a point? Yes, counsel for the House?

Mr. BARON. Mr. Chairman, we have contacted Mr. Bryant, and he has been advised of your intention to go ahead. It's perfectly satisfactory with the House managers.

The CHAIRMAN. We will go ahead at this point, then. If the clerk or whoever operates this equipment could go ahead and turn it on, we'd appreciate it.

[A videotape recording was played at this point.]

Mr. ANDERSON. Mr. Chairman, I would move that the videotaped deposition be accepted as live testimony and the exhibits marked and identified offered at that deposition being received as evidence in this record.

The CHAIRMAN. Is there objection from House counsel to the admission of this deposition as part of the record?

Mr. BARON. The only thing I would like to do is take a quick look at the attachments to the deposition so I can be certain what they are.

The CHAIRMAN. Do you have a copy of it there?

Mr. BARON. No, I do not. May I approach the dais?

The CHAIRMAN. Yes, you can. I don't know if the attachments are attached.

OK. Those are the attachments. Here's the deposition.

The deposition and attachments will be included in the record of the proceeding.

IMPEACHMENT OF JUDGE ALCEE L. HASTINGS

DEPOSITION OF MARGARET DABREAU OWENS

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FRIDAY, JULY 21, 1989

United States Senate,
Impeachment Trial Committee,
Washington, D.C.

The deposition of MARGARET DABREAU OWENS was convened at 4:30 p.m., in Room SH-219, Hart Senate Office Building, Hon. Jeff Bingaman, Chairman of the Committee, presiding.

Present: Senators Bingaman, Rudman, and Pryor.

House Managers Present: Representatives Bryant and Gekas.

Counsel Present: Terence J. Anderson, Counsel for Judge Hastings; Alan I. Baron, Special Counsel, House Impeachment Committee; Patricia Wynn, Assistant Special Counsel, House Impeachment Committee; Mark Klugheit, Counsel, Senate Impeachment Trial Committee; and Elaine Stone, Counsel, Senate Impeachment Trial Committee.

Staff Present: Anthony Harvey, Administrator, Senate Impeachment Trial Committee; P. Casey McGannon, Staff Assistant, Senate Impeachment Trial Committee; and Isabel McVeigh, Staff Assistant, Senate Impeachment Trial Committee.

The Chairman. At this time, the committee is not in session, but we have agreed to conduct the deposition of Margaret Dabreau Owens.

Ms. Owens, would you stand, please, and raise your right hand?

Do you, Margaret Dabreau Owens, swear or affirm that the evidence you shall give in the case now pending between the United States and Judge Alcee L. Hastings shall be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. Owens. I do.

Whereupon,

MARGARET DABREAU OWENS

was called as a witness and, having first been duly sworn, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR JUDGE HASTINGS

BY MR. ANDERSON:

Q Could you tell the committee your full name?

A Margaret Dabreau Owens.

Q And back in 1981, what was your name?

A Margaret Dabreau.

Senator Rudman. Could she pull the microphone up, Mr. Chairman? I can't hear her.

The Chairman. Yes. Maybe you could either pull your chair up or pull the microphone up, or both, so that we could hear you better. Thank you.

BY MR. ANDERSON:

Q Ms. Owens, do you recall September 12th, 1981?

A Yes, I do.

Q And can you tell the committee, to the best of your recollection, what happened on that day?

A Well, my sister came to me and asked if I wanted to go to dinner with her, and she told me that Judge Hastings--since I never met him, I didn't know who it was, so she says, you know, let's go to dinner. I said okay.

Q About what time was that?

A It was just, I think, after 5:00, somewhere between 5:00 and 7:00. It was getting dark, so--.

Q And what time was it when you left your--you were living in Washington at that time?

A Yes, sir.

Q What time was it when you left your home to go to dinner?

A It was after [illegible]:00.

Q And do you recall where you went?

A I think it was the Sheraton Hotel.

Q And to the best of your recollection, what happened then? Where did you go?

A To Judge Hastings' room.

Q And who was present when you arrived, to the best of your recollection.

A A man and a lady.

Q And do you recall today who they were?

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A No. I guess they were just friends. You know, I didn't know.

Q And were you introduced to them then?

A Later on, yes, sir.

Q And what happened then?

A We sat around for a while and then we went downstairs to dinner.

Q And what happened then?

A While we were there, we had dinner and one other person joined us as we were having dinner.

Q Do you recall who that was?

A Yes, sir.

Q Who was that?

A Bill Borders.

Q And it's a matter that the committee has focused some attention on. Do you recall at the time, from any time of your arrival onward, anyone having mentioned the name of Bill Borders before he arrived?

A No, sir.

Q Did you have any sense or expectation that you were waiting or delaying dinner until someone arrived?

A No, sir.

Q Did you have any sense that you had been brought along as a woman to make it an even set of pairings?

A No, sir.

Q Did your sister tell you at the outset, come on, I need someone to go along with me for a date?

A No, sir.

Q Now, subsequent to this evening, do you recall the FBI ever calling your home to inquire about this?

A Yes, sir; to the best of my knowledge, yes, I think I can remember him calling.

Q And at that time, were you and your sister living together?

A Yes, sir.

Q And is there any way in your recollection you can fix the time of that call?

A No, I really can't remember.

Q Putting that call, then, aside, did there come a time when you were again--when the FBI again contacted you with regard to this?

A Yes, sir.

Q And when was that?

A That was prior to Atlanta, Georgia, I think.

Q Prior to the time--do you recall when you went to Atlanta, Georgia?

A I think it was '85; '85, I think. It was '85.

Q Do you recall as you sit here today what you told the FBI agent on that occasion? Do you have any independent recollection?

A No.

Mr. Anderson. Mr. Chairman, might I approach the witness? I have not had a chance--I only met her over the lunch hour, but I'd like to show her what I believe to be an FBI 302. We can lay a foundation later and see if it refreshes her recollection.

The Chairman. You may approach the witness.

Mr. Baron. Mr. Anderson, do you have a copy of that or us? I'm not sure we've seen it.

Mr. Anderson. May I show it to counsel?

The Chairman. Please.

Counsel, is that the only copy? Is there another that we could use?

Mr. Anderson. I thought we had another copy, but apparently it's in the office, Mr. Chairman.

The Chairman. Does the House wish to have a copy of that before we proceed with the questioning?

Mr. Baron. I don't think we need that.

The Chairman. All right. Proceed.

BY MR. ANDERSON:

Q Ms. Owens, I show you a copy of a piece of paper that bears the heading "FD 302" dated 4-4-86, and I'd ask you to look at that and see if it refreshes your recollection.

A Yes, sir.

Q And as you read that document, does it appear to you to be an accurate report of what you told the FBI agents on that time?

A No, sir.

Q In which respects is it inaccurate?

A Well, with my lawyer--I did not speak to any lawyer concerning--.

Q Would the read the paragraph or sentences you think are inaccurate?

A Okay. It says here, "She was then served with a subpoena commanding her appearance before the Investigating Committee of the Judicial Council of the Eleventh Judicial Circuit of the United States in Atlanta, Georgia on April 8th." That's right.

Okay. "Dabreau was shown the original subpoena and ... given a Treasury Check payable to her that accompanied the subpoena ... without her attorney being present. She advised her attorney was J. Leon Williams," and his address, "1740 New Jersey Avenue, N.W., Washington, D.C.," and the telephone number, "and that the contacting agents could meet her at Williams' office at 5:30 p.m. on April 3, 1986.

"On the evening of April 3, Dabreau was recontacted at the office of her attorney ... who was also present during the subsequent interview of Dabreau. At this time ... was given a United States Treasury Check in the amount of $323.00 for which she signed a receipt.

"At this time, Dabreau was advised by the interviewing agents that they would like to interview her with respect to a social gathering she had attended in Washington, D.C."

I don't remember me being at my lawyer's office.

Q Where do you recall the interview taking place?

A They spoke to me at home in my apartment.

Q Apart from that inaccuracy, is the report on the second page and the report--.

A Yes, that is true.

Q That is the best of your recollection?

A Yes, everything in the other page is true, yes, sir.

Mr. Anderson. Mr. Chairman, I would ask that that be appended to the deposition and admitted. We will mark it as an exhibit, but as a statement adopted by a witness who once had recollection and does not now have recollection--prior consistency.

The Chairman. We will include it as an attachment to the deposition.

Mr. Anderson. Thank you, Mr. Chairman.

[The document was marked as Respondent's Deposition Exhibit No. 1 for identification and received in evidence.]

BY MR. ANDERSON:

Q Now, Ms. Owens, pursuant to that subpoena, did you, in fact, travel to Atlanta?

A Yes, sir.

Q And at Atlanta, did you appear and testify under oath?

A Yes, sir.

Q And have you had an opportunity to examine the transcript of the testimony you gave on that occasion?

A Yes, sir.

Q To the best of your--you were under oath on that occasion, were you not?

A Yes, yes, sir.

Q And you testified to the best of your recollection on that occasion?

A Yes, sir.

Q And, again, as you examine it, does that statement seem to be an accurate--.

A Yes, that seems accurate of what I said.

Mr. Anderson. Let me show this to counsel.

Mr. Baron. Is that her IC testimony?

Mr. Anderson. Yes.

Mr. Chairman, again, because the recollection is so faded in the past, I would like to ask that this be attached to the deposition as a prior statement made at a time when the witness was more likely to have recollection, so the committee will have before it all of her prior accounts.

The Chairman. We will attach it as an attachment to the deposition, also.

[The document was marked as Respondent Deposition Exhibit No. 2 for identification and received in evidence.]

BY MR. ANDERSON:

Q Now, just to--you have seen the FBI 302, you've seen the testimony. Am I correct that you do recall that prior to that, there had been one other time when the FBI called your home and interviewed you and your sister subsequent to September 12th and before 1985?

A Yes, sir.

Q But you cannot today, of your own recollection, pigeon-hole that?

A No. That's right, yes. It was before--I really can't, you know, say, well, he called me like, you know, three times or, you know, how many times he has called--you know, called and talked to us, except for the, like, you know, attending this. It sticks in my mind. I was in front of a panel of judges, but the phone calls, I really can't say exactly, you know, how many times he called us.

Q Now, Ms. Dabreau--Ms. Owens--excuse me--prior to September 12th, 1981, had you ever met Judge Alcee Hastings?

A No, sir.

Q And let me give you some names and see if they refresh your recollection. Had you ever met Bill Borders before that time?

A No, sir.

Q Had you ever met a man named Jesse McCrary?

A No, sir.

Q Had you ever met a woman named Donna Mendez?

A No, sir.

Q Since September 12th, 1981, have you seen Judge Hastings prior to today?

A No, sir.

Q Have you talked with him on the phone?

A No, sir.

Q Have you and I met before today?

A No, sir.

Q And I think earlier in the week, you may have spoken by telephone with Ms. Williams. Had you spoken with her prior to that?

A No, sir.

Q You have been interviewed by the FBI and by the Investigating Committee. Have you spoken with the special counsel for the House Managers prior to today?

A No, sir.

Q Do you recall?

A I just spoke to you everyone, you know, asking me about what happened that night. No one, you know, like--but, I mean, everyone that spoke to me, you know, it was like what happened, you know, that night about the judge and, you know, what happened at dinner.

Q And you have told this committee today, as you have in your prior statements, everything you can recall about it?

A Yes, sir.

Q Ms. Owens, I hope this is the last time you will be asked that question.

A I hope so, too.

Mr. Anderson. Mr. Chairman, I have no more questions.

The Chairman. Are there questions from the House Managers to this witness?

Ms. Wynn. Just one, Senator.

EXAMINATION BY COUNSEL FOR HOUSE MANAGERS

BY MS. WYNN:

Q Ms. Dabreau--I'm sorry--Ms. Owens--I believe you just said that you had not met with anyone from the special counsel's office?

A Well, you have to excuse me because I don't know anything--I might make a mistake by saying that, but when you say special counsel, I know prior to me coming her, two ladies came and spoke to me.

Q And was I one of those ladies?

A Yes. As I see you now, I remember.

Ms. Wynn. Nothing further.

The Chairman. Any other questions of this witness? Yes, Senator Pryor.

Senator Pryor. Mr. Chairman, I would like to ask one or two questions to Ms. Owens.

When Mr. Borders, Ms. Owens, arrived in the hotel suite that evening, do you remember if he had with him or not any luggage? Do you remember that?

The Witness. No, sir, I can't recollection anything like that.

Senator Pryor. Any briefcase? He just walked in?

The Witness. You knew, I don't remember, really.

Senator Pryor. All right. During the course of the evening, do you recall that Mr. Borders and Judge Alcee Hastings maybe got off in the corner and had any private discussions, just the two of them, that were exclusive from the other group that you had that night for dinner and the reception?

The Witness. No, sir, no.

Senator Pryor. Thank you.

The Chairman. Let me ask one question, if I could, Ms. Owens. There's been testimony, or have been indications that Judge Hastings has said in remembering back that evening that he did not expect William Borders to appear there at that room.

Your testimony is he did not appear at that room. He appeared downstairs when you had already gone down to eat dinner. Is that your testimony, or did you eat in the room? I'm not clear.

The Witness. No; downstairs. We had dinner downstairs.

The Chairman. And your testimony is Mr. Borders met you upstairs before you went down, or met you downstairs after you were--.

The Witness. Downstairs.

The Chairman. --already eating?

The Witness. Well, yes, dinner; we were almost through eating dinner.

The Chairman. Do you recall if Judge Hastings said anything to indicate whether or not he expected Mr. Borders to be there or was surprised or--.

The Witness. No, sir.

The Chairman. There was nothing said--.

The Witness. No.

The Chairman. --to you that indicated either way?

The Witness. No, sir, no.

The Chairman. Is there any other question? Yes, Senator Rudman.

Senator Rudman. Ms. Owens, you didn't know any of the parties. Your sister evidently did. Who invited your sister?

The Witness. Well, it had to be the judge because she told me we were going to dinner with Judge Hastings, so I guess it was the judge that invited her out to dinner, Judge Hastings.

Senator Rudman. And do you recall if Ms. Mendez was there that night--Donna Mendez?

The Witness. Pardon me?

Senator Rudman. There was another lady there other than your sister. Do you remember her?

The Witness. There was one other lady, yes.

Senator Rudman. Do you remember who she was with, if she was with anyone?

The Witness. She was with a friend, I think, another guy.

Senator Rudman. Would his name be McCrary?

The Witness. I don't know exactly the names, but I know there were two people there.

Senator Rudman. Well, your sister was with Judge Hastings, if anybody was with anybody, is that what you're saying?

The Witness. Yes, because that's the, you know--.

Senator Rudman. Right, and the other lady who was there was with the other gentleman, who, I can tell you, his name was McCrary.

The Witness. Well, they were sitting, talking, yes. Everybody was--I can't say if they came together or they met each other there because we met them there, so I'm not sure if they came together or if they were, you know, just met and talking, like we were.

Senator Rudman. Did you wait a particularly long time up in that hotel room before you went down to dinner, or were you delayed for some time?

The Witness. Not very. You know, I didn't really check the time. We were just, you know, talking and laughing. I never met a judge before. You know, he was asking me things about my country and we were just talking in general and then we went downstairs. So I didn't really, you know, like watch the time. It seemed to be an hour or two hours.

Senator Rudman. Thank you.

The Witness. Okay.

The Chairman. Let me just ask one other question here. Your recollection is that you were already downstairs. Were you already seated, eating, by the time Mr. Borders came, or were you seated waiting to order or did you meet him outside the restaurant, or do you recall?

The Witness. No. We were at a table. I can't say exactly we were eating, but I know we were at the table when he came.

The Chairman. You were at the table?

The Witness. Yes.

The Chairman. And there were some extra places at the table, or there was room at least for him to sit when he did arrive, or you don't recall?

The Witness. No, I don't recall, but I don't think we were set up waiting for one person. It was just the party who was there eating, and then, you know, he came in, but I don't--that's my recollection.

The Chairman. Did he join the party?

The Witness. Yes, he sat--yes.

The Chairman. He sat down?

The Witness. Yes, sir.

The Chairman. And had dinner, as you recall?

The Witness. I don't remember if he had dinner with us. I really can't recall if he had dinner.

The Chairman. Any other questions of this witness?

[No response.]

The Chairman. Any reason this witness cannot be excused?

[No response.]

The Chairman. If not, we appreciate your testimony very much, and this witness is excused.

The Witness. Thank you, sir.

Mr. Anderson. Mr. Chairman, could I--those will be attached as deposition exhibits and we'll work out the mechanics with Casey.

The Chairman. Please.

Mr. Anderson. Thank you, sir.

[Whereupon, at 4:48 p.m., the taking of the deposition was concluded.]

INVESTIGATIONS CONDUCTED UNDER THIS SUBSECTION," AND THIS IS THE KIND OF INVESTIGATION IT IS TALKING ABOUT, "SHALL BE CONFIDENTIAL AND SHALL NOT BE DISCLOSED BY ANY PERSON IN ANY PROCEEDING."

THE WITNESS: OKAY.

JUDGE GODBOLD: MR. WEBB.

- - -

MARGARET OWENS,

CALLED AS A WITNESS, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. WEBB:

Q. MS. OWENS -- IS OWENS YOUR MARRIED NAME?

A. YEAH.

Q. AND WHAT'S YOUR MAIDEN NAME?

A. DABREAU.

Q. YOU ARE THE SISTER OF PEARL DABREAU MAPP WHO JUST APPEARED BEFORE THIS COMMITTEE RIGHT BEFORE YOU?

A. YES.

Q. IN 1981, WERE YOU MARRIED?

A. NO.

Q. SO YOUR NAME AT THAT POINT WAS MARGARET DABREAU?

A. RIGHT.

Q. WHERE DO YOU CURRENTLY RESIDE, MS. OWENS?

A. 931 LONGFELLOW STREET, NORTHWEST, WASHINGTON, D. C.

Q. KEEP YOUR VOICE UP A LITTLE BIT AND SLOW DOWN.

A. I'M SORRY.

Q. ARE YOU A NATIVE OF TRINIDAD?

A. YES.

Q. AND WHEN DID YOU COME TO THIS COUNTRY?

A. 9-80.

Q. 1980?

A. YES.

Q. LATE 1980 OR EARLY 1981?

A. LATE 1980.

Q. IN 1981, WHAT WAS YOUR ADDRESS?

A. 6817 GEORGIA AVENUE, NORTHWEST.

Q. YOU LIVED WITH YOUR SISTER?

A. RIGHT.

Q. NOW, IF I CAN FOCUS YOUR ATTENTION ON THE MONTH OF SEPTEMBER, 1981, DID THERE COME A TIME WHEN YOU WENT TO DINNER WITH YOUR SISTER AT THE SHERATON HOTEL IN WASHINGTON, D. C.?

A. YES, I DID.

Q. AND AT THAT TIME DID YOU MEET JUDGE ALCEE HASTINGS?

A. UH-HUH. YES, I DID.

Q. I'M SORRY?

A. YES.

Q. PRIOR TO THE DINNER IN SEPTEMBER OF 1981, HAD YOU MET JUDGE HASTINGS?

A. NO.

Q. WILL YOU TELL THE COMMITTEE HOW YOU CAME TO GO TO THE DINNER WITH YOUR SISTER?

A. MY SISTER INVITED ME TO GO TO DINNER WITH HER, WITH JUDGE HASTINGS.

Q. DO YOU RECALL APPROXIMATELY WHEN YOU WENT TO THE DINNER?

A. IT WAS AFTER 5:00, YOU KNOW. I KNOW IT WAS.

Q. WAS IT DARK OUTSIDE?

A. JUST ABOUT, YEAH, BECAUSE IT WAS SEPTEMBER. JUST ABOUT.

JUDGE GODBOLD: DID YOUR SISTER COME HOME AND TAKE YOU BACK TO THE SHERATON OR DID SHE CALL YOU FROM THE SHERATON?

THE WITNESS: NO. SHE CAME HOME. WE LEFT FROM HOME TOGETHER.

JUDGE GODBOLD: AND WHEN SHE CAME HOME, DID SHE INVITE YOU ON THE BASIS OF WHAT SHE KNEW OR DID SHE GET A TELEPHONE CALL WHEN SHE WAS AT HOME OR WHAT? DID SHE COME HOME TO GET YOU?

THE WITNESS: ALL I KNEW -- WELL, I GUESS MAYBE THE TELEPHONE CALL -- SHE SAID, YOU KNOW, IF I WANTED TO GO TO DINNER WITH HERSELF AND JUDGE HASTINGS, AND I SAID OKAY.

JUDGE GODBOLD: SHE CAME HOME AND TOLD YOU THAT?

THE WITNESS: YEAH. SHE WAS AT HOME, AND SHE TOLD ME.

JUDGE GODBOLD: DO YOU KNOW WHETHER YOUR SISTER HAD

BEEN TO THE HOTEL BEFORE THEN?

THE WITNESS: NO, I DON'T KNOW.

JUDGE GODBOLD: YOU DON'T KNOW?

THE WITNESS: HUH-UH.

JUDGE GODBOLD: THANKS.

GO AHEAD, MR. WEBB.

BY MR. WEBB:

Q. SHE JUST CAME HOME AND SAID, "I WOULD LIKE YOU TO GO TO DINNER WITH ME"?

A. YEAH.

Q. DID SHE TELL YOU WITH WHOM YOU WERE GOING TO DINNER?

A. UH-HUH.

Q. WHO DID SHE TELL YOU?

A. JUDGE HASTINGS.

Q. AND WHEN YOU GOT TO THE HOTEL SOMETIME AFTER 5:00, WHAT DID YOU DO?

A. WE JUST -- I THINK WE WENT TO THE ROOM. YOU KNOW, WE WAITED THERE.

Q. AND WHO WAS IN THE ROOM WHEN YOU GOT THERE?

A. JUST JUDGE HASTINGS, IF I CAN RECALL, AND I THINK A GUY AND A LADY.

JUDGE JOHNSON: I DIDN'T HEAR THAT.

MR. WEBB: YOU HAVE GOT TO KEEP YOUR VOICE UP.

BY MR. WEBB:

Q. REPEAT WHAT YOU JUST SAID. WHO WAS IN THE ROOM?

A. JUDGE HASTINGS AND I THINK TWO FRIENDS. I DON'T KNOW THEIR NAMES. I DIDN'T KNOW THEM. A GUY AND A WOMAN, A MAN AND A WOMAN.

Q. WERE THEY BLACK?

A. YEAH.

Q. DO YOU RECALL BEING INTRODUCED TO THOSE PEOPLE?

A. YEAH.

Q. WAS ONE OF THOSE PERSONS JESSE McCRARY?

A. YEAH, I THINK SO, UH-HUM, YEAH.

Q. AND DO YOU RECALL IF THE WOMAN'S NAME WAS DONNA MENDEZ?

A. THAT, I DON'T REMEMBER. YOU KNOW, THE LADY'S NAME. I DON'T THINK THAT DAY -- YOU KNOW, I KNEW SHE WAS THERE, BUT I DON'T THINK THEY INTRODUCED HER TO US OR TOLD US HER NAME OR ANYTHING LIKE THAT.

Q. THROUGHOUT THE ENTIRE NIGHT, YOU NEVER HEARD HER NAME?

A. MAYBE I DID, BUT, YOU KNOW, I DON'T REMEMBER. IT'S SO LONG.

Q. DID YOU MEET A WOMAN NAMED BONNIE McCRARY?

A. NOT TO MY RECOLLECTION, NO. I DON'T REMEMBER.

JUDGE TJOFLAT: THAT WOULD BE A SECOND WOMAN.

THE WITNESS: NO. NO. I JUST SAW ONE WOMAN.

BY MR. WEBB:

Q. JUST SAW ONE WOMAN THAT ENTIRE NIGHT?

A. YES. I THINK SO. I DON'T RECALL MEETING TWO AT ALL.

Q. WAS SHE A YOUNG WOMAN?

A. YEAH.

Q. AND HOW LONG DID YOU STAY IN THE HOTEL ROOM?

A. FOR -- WELL, I CAN'T SAY EXACTLY, YOU KNOW, HOURS BUT WE STAYED A LITTLE WHILE. NOT TOO LONG IN THE HOTEL.

Q. DO YOU RECALL WHEN YOU WENT TO DINNER?

A. IT MUST HAVE BEEN MAYBE AROUND 9:00, I GUESS. BETWEEN 8:00 AND 10:00, SOMETIME AROUND THERE.

Q. WHEN YOU GOT TO THE HOTEL ROOM AND MET JUDGE HASTINGS, DID YOU GAIN ANY INFORMATION THAT OTHER PEOPLE WERE EXPECTED TO ARRIVE AT THE HOTEL ROOM?

A. NO. NO. HE DIDN'T SAY ANYTHING.

Q. DID SOMEBODY ELSE SUBSEQUENTLY ARRIVE AT THE HOTEL ROOM?

A. NO.

Q. DURING THE REST OF THE NIGHT AFTER YOU AND YOUR SISTER WERE THERE?

A. YEAH. ONE OTHER PERSON, UH-HUH.

Q. AND DO YOU REMEMBER WHO THAT PERSON WAS?

A. YEAH.

Q. WHO WAS THAT PERSON?

A. BILL BORDERS.

Q. HAD YOU PREVIOUSLY MET MR. BORDERS?

A. NO.

Q. DO YOU RECALL APPROXIMATELY WHEN MR. BORDERS ARRIVED, AT THE HOTEL?

A. NO. I REALLY CAN'T SAY.

JUDGE GODBOLD: BUT IT WAS BEFORE DINNER, WASN'T IT?

JUDGE TJOFLAT: BEFORE YOU WENT TO DINNER?

THE WITNESS: I THINK SO, YEAH. YOU KNOW, I THINK SO. I'M NOT QUITE SURE IF IT WAS BEFORE OR DURING DINNER. I REALLY CAN'T SAY.

BY MR. WEBB:

Q. WHEN MR. BORDERS ARRIVED, DID JUDGE HASTINGS OR ANYBODY ELSE, MR. McCRARY OR THE OTHER WOMAN, EXPRESS SURPRISE AT SEEING MR. BORDERS?

A. ACT SURPRISED? WELL, YOU KNOW, IT'S LIKE, YOU KNOW, HE CAME IN AND EVERONE SAID HI. NO ONE SEEMED EXTREMELY SURPRISED THAT HE CAME. I WOULDN'T SAY SO.

Q. DO YOU KNOW IF JUDGE HASTINGS WAS EXPECTING MR. BORDERS TO ARRIVE THAT NIGHT?

A. NO. NO, I REALLY CAN'T SAY.

Q. ONE WAY OR THE OTHER?

A. NO. HE DIDN'T SAY ANYTHING. HE DIDN'T MENTION HIS NAME AND -- I DON'T THINK SO. HE DIDN'T SAY ANYTHING.

Q. THEN MR. BORDERS WAS AT DINNER WITH YOU?

A. YES. HE WAS AROUND THE TABLE, UH-HUH.

Q. AND AFTER DINNER -- WELL, FIRST OF ALL, HOW LONG DID DINNER LAST? DO YOU RECALL?

A. IT LASTED A COUPLE OF HOURS, BECAUSE WE WERE ALL

SITTING, YOU KNOW, HAVING DINNER. NOT REALLY RUSHING TO GO ANYWHERE.

Q. SO AFTER DINNER, DID YOU GO BACK TO THE HOTEL ROOM?

A. YEAH.

Q. AND DID YOU AND YOUR SISTER GO HOME TOGETHER?

A. UH-HUH.

Q. WHO TOOK YOU HOME? ANYBODY?

A. NO. I THINK WE CAUGHT A CAB.

Q. DID MR. BORDERS LEAVE BEFORE YOU LEFT THE HOTEL ROOM OR AFTER YOU LEFT THE HOTEL ROOM?

A. I REALLY DON'T REMEMBER, BECAUSE AFTER WE LEFT THE HOTEL, EVERYONE WENT THEIR SEPARATE WAYS. I REALLY CAN'T SAY IF HE WENT BEFORE OR AFTER.

YOU KNOW, AS I SAID --

Q. EVERYBODY WAS LEAVING AT ABOUT THE SAME TIME TO YOUR RECOLLECTION?

A. YEAH. I THINK.

Q. SINCE THAT DINNER IN SEPTEMBER, 1981 AT THE SHERATON, HAVE YOU HAD ANY FURTHER CONTACT WITH JUDGE HASTINGS?

A. NO, HUH-UH.

Q. HAVE YOU HAD ANY FURTHER CONTACT WITH MR. BORDERS?

A. NO. NO.

Q. DURING THE COURSE OF THE EVENING, DO YOU RECALL HEARING ANY CONVERSATION ABOUT AN UPCOMING FIGHT BETWEEN SUGAR RAY LEONARD AND THOMAS HEARNS IN LAS VEGAS, NEVADA?

A. NO. NO. HUH-UH.

Q. DO YOU RECALL ANYTHING OF SUBSTANCE THAT WAS DISCUSSED THAT EVENING?

A. NO. NO.

MR. WEBB: I HAVE NOTHING FURTHER OF MS. OWENS.

JUDGE GODBOLD: ANY QUESTIONS FROM ANY MEMBERS OF THE COMMITTEE?

ALL RIGHT. THANK YOU, MS. OWENS. YOU ARE EXCUSED.

THE WITNESS: THANK YOU.

JUDGE GODBOLD: MR. DOAR, WE WOULD LIKE TO BE IN RECESS FOR TEN MINUTES.

WHO IS THE NEXT WITNESS?

MR. WEBB: MR. GONZALEZ.

(THEREUPON, THE PROCEEDINGS WERE RECESSED AT 3:45 O'CLOCK P.M., AND THEN CONTINUED AS FOLLOWS.)

- - -

MR. DOAR: CALL SPECIAL AGENT MICHAEL MALONE.

THE CLERK: SPECIAL AGENT MICHAEL MALONE, COME INTO THE COURTROOM, PLEASE.

MR. MALONE, YOU HAVE TESTIFIED PREVIOUSLY IN THESE PROCEEDINGS?

THE WITNESS: YES.

THE CLERK: YOU ARE STILL UNDER OATH.

YOU MAY BE SEATED AND STATE YOUR NAME FOR THE RECORD.

DEPOSITION ATTACHMENT B

FD 302

FEDERAL BUREAU OF INVESTIGATION

Date 4/4/86

On April 3, 1986, at approximately 7:09 a.m., MARGARET DABREAU, 931 Longfellow Street, N.W., Apartment 106, Washington, D.C., was contacted at her residence and advised of the official identity of the contacting Agents. She was then served with a subpoena commanding her appearance before the Investigating Committee of the Judicial Council of the Eleventh Judicial Circuit of the United States in Atlanta, Georgia on April 8, 1986, in relation to the matter of a complaint filed against United States District Judge ALCEE L. HASTINGS.

DABREAU was shown the original subpoena and given a copy of same, however, she refused to accept the United States Treasury Check payable to her that accompanied the subpoena. She added she would not sign for the check nor answer any questions without her attorney being present. She advised her attorney was J. LEON WILLIAMS, 1740 New Jersey Avenue, N.W., Washington, D.C., telephone number 202-483-6300 or 483-6350 and that the contacting Agents could meet her at WILLIAMS' office at 5:30 p.m. on April 3, 1986.

On the evening of April 3, 1986, DABREAU was recontacted at the office of her attorney, J. LEON WILLIAMS, who was also present during the subsequent interview of DABREAU. At this time, DABREAU was given a United States Treasury Check in the amount of $323.00 for which she signed a receipt.

At this time, DABREAU was advised by the interviewing Agents that they would like to interview her with respect to a social gathering she had attended in Washington, D.C. in 1981, at which time, Judge ALCEE L. HASTINGS, was also in attendance.

Investigation on 4/3/86 at Washington, D.C. File WASHINGTON FIELD 62A-11404

SA ROBERT ALAN WHITE RAW

By SA C. DALE HAMILTON RAW:ldj Date Dictated 4/4/86

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FD 302a

CONTINUATION OF INTERVIEW 62A-11404 PAGE 2*

According to DABREAU, although she could not specifically recall the date, she first met HASTINGS at a dinner in a hotel in Washington, D.C. DABREAU was unable to recall the name of the hotel.

She explained her sister, PEARL DABREAU, had invited her to the dinner and they had gone to the dinner together. In addition to herself, her sister and HASTINGS, DABREAU recalled there was another man and woman present, whose names she was unable to recall. She further advised that an individual by the name of BILL BORDERS showed up sometime later. She was unable to recall how much later it was that BORDERS showed up. According to DABREAU, she thought she had met the other people in HASTINGS' room at the hotel, however, she could not recall if BORDERS showed up at HASTINGS' room or at the table in the hotel restaurant where they had dinner.

According to DABREAU, she could recall no indications that they were waiting specifically for BORDERS before they went to dinner. She added it was evident that HASTINGS and the other man knew BORDERS and were not total strangers.

DABREAU stated she has never been with any of the individuals who were present at this dinner at any time since then. She further stated she has had no telephonic contact with any of those present at the dinner, other than her sister, at any time.

DABREAU furnished no additional pertinent information, however, she advised her full name was MARGARET LUCY DABREAU OWENS, having married RAY OWENS in July, 1985. According to DABREAU, her husband is in the UNITED STATES ARMY at the WALTER REED ARMY HOSPITAL in Washington, D.C. and carries the rank of E-4. DABREAU stated she was originally from Trinidad having come to the United States in July, 1980. According to DABREAU, her sister, PEARL, has been in the United States for approximately sixteen (16) years and is a naturalized citizen. DABREAU furnished her Social Security Account Number as 578-04-6717. She is currently employed at the RAGGEDY ANN AND ANDY DAY NURSERY located at 6733 New Hampshire Avenue, Takoma Park, Maryland, telephone number 301-270-5122.

We still do not have the House managers present. Let me bring up one other item which we might be able to discuss while we await their return. I'm informed that counsel for respondent would like to see introduced prior testimony for two witnesses, Benjamin Daniel Brown and Mildred Hastings. We already dealt with that issue in our Trial Order No. 8. And if there is some desire to reopen or reconsider any of that, is it possible to hear that at this time?

Let me first ask, Mr. Baron, are you in a position to give us the House point of view on this?

Mr. BARON. Mr. Chairman, this is the first notice we've had that this issue is being revisited. We thought that this was settled by the Senate's order.

The CHAIRMAN. Well, we will not require you to respond, then, until you have a chance to do so. But why don't we hear from counsel at this point, if we could, as to the point he wants to make, and then you can have an opportunity at a later time.

Mr. ANDERSON. In fairness to everyone, I didn't expect that to be addressed this afternoon, so I am not trying to do it, but I did want to get it done before you left for the weekend, so that the issue could be considered.

Specifically, the committee's order, as I understood it, was without prejudice to renewing it in various circumstances. The committee has tried and we have tried. Benjamin Daniel Brown has a lot of mail accumulated in front of his house, I understand, but no subpoena has been served upon him. His prior testimony was at the trial of William Borders. He was one of the witnesses who simply attested that Mr. Borders had a fine reputation up until October 9, 1981, in various circles.

Mrs. Hastings is the judge's mother. She has had severe arthritis, she had at the time of trial. She still has it. She essentially remains house-bound. I simply, on compassion—I could, on medical grounds, I suppose, urge it, but I have never seen her out of the house in the eight years I've been working on this. I would ask that her prior testimony at trial be accepted.

I would proffer—and the committee can revisit this with counsel tomorrow, if they want—that I can understand the reasons for some of the people who the House might want to cross-examine, and I will honor that.

There is a Simon Stephen Selig, III who testified at Mr. Borders' trial. I have never met him. He is willing to come next week. It will be fairly inconvenient. I am not sure as to the time, but the two that I specifically put before you are Mrs. Hastings, the judge's mother, and that would be on—I think she is medically unavailable, and I'm not sure what purpose it would serve. She was cross-examined by Mr. Weingarten. And William Daniel Brown, we can't find him.

The CHAIRMAN. Do you intend—let me just ask for my information and the committee's—do you intend—under this order, we said to the extent that any of these witnesses, which included Mr. Brown and Mrs. Hastings, we said that to the extent any of these witnesses are unavailable, the committee is willing to reconsider its ruling under standards similar to those in Federal Rule of Evidence 804. Do you intend to make any written submission to the committee as to the unavailability of those two witnesses?

Mr. ANDERSON. I have and I could append a report from the Impeachment Trial Committee staff on the efforts that have been made to serve Mr. Brown, I would do that written submission. Mrs. Hastings does not like doctors. I could produce an older letter, giving the last available report of her medical condition. I don't think it is an issue that is in dispute, but I could make a submission, if you want, Mr. Chairman. I just wanted to get the issue—I don't expect——

The CHAIRMAN. Let's take this as notice to the House counsel that you're making such a request. If you would submit whatever you would like with regard to those two witnesses or any other witness, and then House counsel will be given a chance to respond before we rule on that. We will do that before we close business tomorrow.

Is there any other business we can transact here until we get the House managers here?

[No response.]

ARGUMENT RE: COMPETENCY OF JOSEPH NESLINE AS A WITNESS

The CHAIRMAN. The one other item that is called to my attention by counsel for the committee here is testimony of Joseph Nesline. The only information we have been given, the committee, supports the position that he is not competent to give testimony at this trial. Is that agreeable? Is that a contested matter that this committee needs to make a decision on? Does counsel for Respondent wish to call him as a witness? If so, he's not on the witness list that we have received.

Mr. ANDERSON. Well, he has been on our witness list from the outset. I had understood that the committee had determined—and the reason why I was calling Kendall Schull was on the thing that he was unavailable. I have received I think the same information the committee has. I have no reason to dispute it. I would prefer to have the committee ruling, simply because it adds one more to the list of people who had died or become incompetent since these events were investigated. I do not intend to—I couldn't produce any other witnesses and I am willing to accept the representations that are made, but I would rather just have that backed by a committee decision that Mr. Joseph Nesline, for purposes of these proceedings, is not competent to appear as a witness.

The CHAIRMAN. What is the House position on this? We have no real record with which to make determinations about the competency of witnesses before us. What is the House position?

Mr. BARON. Mr. Chairman, we attempted to call Mr. Nesline and had the same experience in the House proceedings. We were supplied with medical reports by his counsel and by, I believe, the probation officer who supervised Mr. Nesline, all of which tended to confirm that he was not competent to be called as a witness.

The materials that we've seen that were submitted to the Senate committee essentially are an update of that, they don't change anything, and so we have no reason to question the fact that Mr. Nesline is not competent as a witness.

The **Chairman**. I don't think it's appropriate for the committee to make a determination one way or the other. If counsel for Respondent wishes to call Mr. Nesline, at that point we would make that determination. If you do not, then obviously that's your prerogative. But I don't see that the committee should take it upon itself to make a determination as to the competency of a witness that you do not desire to call.

Mr. **Anderson**. Mr. Chairman, may I briefly just—Mr. Nesline was on our witness list. He was taken off, because I thought the determination had been made. I can put him back on. Through the proffers we made during the pretrial proceedings, particularly the statement of due process concerns—Mr. Nesline has been a central character in this play, he was one of the people whose deposition I wanted.

The **Chairman**. I have great difficulty seeing why counsel can't stipulate on this matter. If you would like to bring in his attorney to establish some fact on it, I don't think that is a useful way for the committee to spend its time. But, as I say, we have no record in front of us on which to determine the competency of a witness at the present point, and I have great difficulty in making that kind of a ruling.

Mr. **Anderson**. Help me. I think the record you had was far more substantial the record you had on Phillip Moscato. Mr. Chairman, I am just trying to understand you. I have no problem that the man is probably incompetent. I just want something that I can argue later in the Senate as one of the other functions of delay, and I'm not——

The **Chairman**. I think the stipulation to the effect that he is not competent, cannot be called as a witness by Respondent at this point, would serve Respondent's needs.

Mr. **Anderson**. If the Chair will accept such a stipulation for purposes of establishing his unavailability with respect to calling Kendall Schull to testify as to what Mr. Nesline told him——

The **Chairman**. I know of no problem with that, unless counsel for the House sees a problem.

Mr. **Anderson**. Respondent would propose to stipulate that Joseph Nesline has, by virtue of Alzheimer's and other diseases, apparently become incompetent to testify in these proceedings.

Mr. **Baron**. I didn't understand Mr. Anderson's reference to Mr. Schull. How did that tie in?

Mr. **Anderson**. Agent Schull, in the materials that I think were put before the committee as exhibits in pretrial proceedings, had some conversations in 1985 with Mr. Nesline, in which Mr. Nesline purportedly told Agent Schull that he thought that Borders was scamming his friend Hastings.

Mr. **Baron**. That was the one based on reading newspaper articles?

Mr. **Anderson**. That was a part of what Mr. Schull reported.

The **Chairman**. Why don't you prepare a written stipulation, if you would, Mr. Anderson, which we could then see if it is acceptable to both yourself and the House.

STIPULATION

Joseph Nesline has become incompetent to testify for the reasons set forth in the letter from his counsel appended to this stipulation.

Terrence Anderson
Counsel for United States
District Judge Alcee L. Hastings

John W Bry
for the House Managers

LAW OFFICES
WILLIAMS & CONNOLLY
HILL BUILDING
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COUNSEL
CHARLES H. WILSON
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*NOT ADMITTED IN DC

June 27, 1989

BY HAND

Elaine W. Stone
Counsel, Impeachment Trial Committee
United States Senate
Hart Senate Office Building
Room SH-902D
Washington, D.C. 20510

Dear Ms. Stone,

I am writing in response to your letter of May 31, 1989 concerning Joseph Nesline. Mr. Nesline is not competent as a witness in this, or any other matter. Moreover, if he were subpoenaed, he would exercise his constitutional privilege and decline to testify.

I understand that you already have a copy of my letter to the House Committee concerning Mr. Nesline's mental condition, and the enclosures I submitted with that letter. You are therefore aware that Mr. Nesline has severe memory deficits, such that it is virtually impossible to obtain reliable information from him. His memory deficits were apparent upon psychological testing, and indeed were displayed in the tape recordings made by the FBI during their undercover investigation. He has, in addition, serious documented health problems including epilepsy, emphysema and heart disease.

You have, I believe, also received a letter from Mr. Nesline's probation officer stating that his mental condition has not changed. Mrs. Nesline, who has to see to Mr. Nesline's day-to-day functioning because of his inability to care for himself, has told me the same thing. I am also enclosing a copy of a letter from his doctors attesting to his deteriorating physical and mental condition. Under these circumstances, Mr. Nesline's testimony about incidents that occurred many years ago cannot possibly be of any probative value whatsoever.

Even were he subpoenaed, Mr. Nesline would assert his Fifth Amendment privilege and would refuse to testify. You are of course aware that Mr. Nesline refused to testify before a federal grand jury in Florida that was investigating this matter, even under a grant of immunity. Despite his age and failing health even at that time, Mr. Nesline served a substantial period of incarceration for contempt rather than testify. He is no more willing to testify today.

In my opinion, Mr. Nesline retains a valid Fifth Amendment privilege. As you are aware, the charges Mr. Nesline faced in the District of Columbia were based upon events which occurred less than five years ago. While I do not believe Mr. Nesline could be re-prosecuted on those particular charges, they could be made predicates for a RICO charge against him, and if a RICO charge were brought, it could incorporate as well alleged criminal activity occurring many years ago. See 18 U.S.C. § 1961(5). I therefore believe that Mr. Nesline could in good faith assert a Fifth Amendment privilege to refuse to testify about the matters under inquiry.

I hope that this letter is a sufficient statement of Mr. Nesline's position. I stand ready to provide further information or argument as necessary.

Very truly yours,

Robert S. Litt

RSL/lac

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June 19, 1989

Mr. Robert S. Litt
Williams & Connolly
839 Seventeenth Street, N.W.
Washington, D.C. 20006

Re: Joseph Nesline

Dear Mr. Litt,

Mr. Nesline is a patient followed in our practice since 1987. This patient has been followed by us for a number of problems including coronary disease, history of GI bleed and a history of epilepsy. The patient additionally has had significant problems with mentation when initially seen in October, 1987, and these have continued to decline and the patient is at present totally dependent upon his wife regarding his daily functions.

I feel based on our continued evaluation of this patient regarding his mental function and his deteriorating physical condition that he would be of little use as a competent witness.

Thank you for your attention in this matter.

Sincerely yours,

Stephen S Ruggles PA-C.

Stephen S. Ruggles, P.A.C. for
Brian M. Benson, Jr. M.D.

SSR/BMB/jcr

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Let me ask the House managers, are you prepared—I see Representative Conyers is here—is it possible at this point for us to go forward with the next witness for Respondent?

Mr. **Conyers**. I think we can, Mr. Chairman.

The **Chairman**. Would the Respondent please call his next witness.

Mr. **Anderson**. Respondent calls James Gunn.

The **Chairman**. Would you raise your right hand, please?

Do you, James Gunn, swear and affirm that the evidence you shall give in the case now pending between the United States and Judge Alcee L. Hastings shall be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. **Gunn**. Yes, I do, sir.

The **Chairman**. Please sit down.

TESTIMONY OF JAMES GUNN

DIRECT EXAMINATION

Mr. **Anderson**. Mr. Gunn, would you pull down the microphone, and if you would talk into it so that the committee could hear you.

Would you state your full name for the committee, sir?

Mr. **Gunn**. My name is James Gunn.

Mr. **Anderson**. Where do you reside?

Mr. **Gunn**. I reside in Miami, Florida, at 3940 Southwest 124th Avenue.

Mr. **Anderson**. Are you presently employed?

Mr. **Gunn**. No, I'm retired from the Marine Corps on disability retirement.

Mr. **Anderson**. And when did you serve in the Marine Corps?

Mr. **Gunn**. I served from 1948 to 1953.

Mr. **Anderson**. And did you serve in the Korean Conflict?

Mr. **Gunn**. I'm one of the survivors of the Chosen Reservoir.

Mr. **Anderson**. Now, Mr. Gunn, did there come a time when you met Alcee Hastings?

Mr. **Gunn**. I met Mr. Hastings, Judge Hastings, I think in the early sixties in Broward County, when I was in the bonding and insurance business.

Mr. **Anderson**. And were you called by the defense and asked to come forward and testify at his trial?

Mr. **Gunn**. Yes, I was and I——

Mr. **Anderson**. Did you agree to do that?

Mr. **Gunn**. Yes, I did.

Mr. **Anderson**. Subsequent to that trial, do you recall having had any occasion to discuss that with Mayor Stephen Clark?

Mr. **Gunn**. Yes, I have.

Mr. **Anderson**. Can you remember when the first occasion occurred?

Mr. **Gunn**. I can't, I'm sorry, I can't remember the exact date, but within—to the best of my recollection, it was about three weeks after I testified, I had a conversation with Mayor Clark.

Mr. **Anderson**. And where did that conversation occur?

Mr. **Gunn**. The courthouse in Dade County, Florida.

Mr. **Anderson**. Now, is that the county courthouse, the state courthouse?

Mr. **Gunn**. Yes, sir, it is.

Mr. **Anderson**. And to the best of your recollection, what did Mayor Clark say to you and what did you say to him?

Mr. **Baron**. Objection, hearsay.

Mr. **Anderson**. This is offered to prove the fact that words were said. It isn't nothing about the Mayor or are we offering to prove the proof of the matter asserted.

The **Chairman**. The witness can recount to the committee what transpired in the conversation as best he remembers it.

Mr. **Gunn**. Mayor Clark approached me on the second floor of the courthouse, approximately three weeks after I had testified, and a very indignant matter, to the effect of, you know, "What the hell are you doing testifying for Judge Hastings, he's a bad guy and eventually they're going to get him."

Mr. **Anderson**. What did you say in response?

Mr. **Gunn**. I responded in the same fashion, like, you know, "Who are you to judge this man," and there were some words back and forth between him and I and I walked away from the conversation.

Mr. **Anderson**. Was there a subsequent occasion, either with Mayor Clark or in the presence of a man, Glenn Whittle, that you had a further discussion?

Mr. **Gunn**. Yes, sir, it was—here again, dates, I think within six months or a period of that length of time, I went in to have lunch at Fascell's Restaurant on Southwest 8th Street and 34th Avenue, I believe is about the area where it's at, and I ran into Mayor Clark and Mr. Whittle and there were other parties with them at the time.

Mr. **Anderson**. And to the best of your recollection, what was said on that occasion, and who said it?

Mr. **Gunn**. I was getting ready to sit down——

Mr. **Baron**. Unless it's being offered for something other than the truth of what was said.

Mr. **Anderson**. Mr. Chairman, it's being offered for something other than what the truth was said, but I thought we had disposed of the hearsay rule in these proceedings pretty early on by——

Mr. **Baron**. That is not my understanding.

The **Chairman**. Well, the objection will be overruled and the witness will be allowed to recount his memory about what transpired in that conversation.

Mr. **Gunn**. Mr. Whittle was making fun gestures directed towards me in reference to my being a friend of Judge Hastings, and it was to the effect that——

Mr. **Anderson**. Was he saying this, or what was he——

Mr. **Gunn**. Yes, he said this directly to me. He said that, "Eventually, we're going to get that black son-of-a-bitch," and I got very indignant, and Steve Clark grabbed him by the shoulder and was——

Mr. **Anderson**. Grabbed who by the shoulder?

Mr. **Gunn**. Whittle—and was pulling him down and telling him to sit down, you know. I just turned my back. I was sitting at the counter and they were about as far as here to that table from me.

Mr. **Anderson**. Now, how long had you known Steve Clark at this time?

Mr. **Gunn**. I've known Steve Clark since either the third or fourth grade in grade school.

Mr. **Anderson**. And how long had you known Glenn Whittle?

Mr. **Gunn**. I've known Glenn Whittle, I would say, in the early sixties I met him.

Mr. **Anderson**. Now, do you recall, have there been any subsequent occasions where, either with Mr. Whittle or Mayor Clark, you had conversations regarding Judge Hastings?

Mr. **Gunn**. Yes, there has.

Mr. **Anderson**. Carrying it forward, when was the next such occasion?

Mr. **Gunn**. Former State Senator Richard Rennick approached me to go over to Marco Island with him, that he had an appointment to talk to Glenn Whittle, and I asked Dick, I said, you know, "Why do you want to go?" and he says, "I just want you to overhear what's going on."

Mr. **Anderson**. Did you accompany him?

Mr. **Gunn**. I did, on two occasions.

Mr. **Anderson**. And do you recall when the first of those was?

Mr. **Gunn**. I think it was in the area of 1986. Mr. Whittle has a time-sharing unit two weeks there.

Mr. **Anderson**. And for the committee, where is Marco Island?

Mr. **Gunn**. Marco Island is adjacent to Miami, is approximately 85 miles west, on the West Coast.

Mr. **Anderson**. And without going into all the topics discussed, was something said about Judge Hastings during the time you were at Mr. Whittle's house there?

Mr. **Gunn**. Yes, there was.

Mr. **Anderson**. And what was that?

Mr. **Gunn**. To the best of my recollection—you just want the——

Mr. **Anderson**. What did Mr. Whittle say to you and what did you say to him regarding Judge Hastings, to the best of your recollection?

Mr. **Gunn**. Before the statement of Judge Hastings came up, I overheard a conversation that took place about 30 minutes in the living room of his house with Senator Rennick, and——

Mr. **Anderson**. That was statements made by Mr. Whittle?

Mr. **Gunn**. Yes.

Mr. **Anderson**. Would you report those to the committee?

Mr. **Gunn**. OK. After that conversation, Mr. Whittle again questioned me, you know, why would I want to help Alcee Hastings, and I conferred to him that, why he asked me a question of this magnitude, and there was a little back-and-forth going there, and again he reaffirmed that eventually they are going to get Hastings.

Mr. **Anderson**. And is that all that was said on that occasion, do you recall? That's the sum and substance of it?

Mr. **Gunn**. In reference to Hastings, but there——

Mr. **Anderson**. That's all. And again, was there a further occasion when these topics were discussed?

Mr. **Gunn**. Here again, I think it was about a year later, Senator Rennick again approached me to go to Marco Island with him. Senator Rennick has as home over there, and I said yes, and I took my son with me at this particular time and met him over there. We went over to Glenn Whittle's time-sharing unit, and Senator Rennick again had pre-conversation with Whittle——

Mr. ANDERSON. Did the subject of Judge Hastings come up at that time?

Mr. GUNN. Yes.

Mr. ANDERSON. And what was said?

Mr. GUNN. At this point, Whittle had reversed his attitude to the effect that "we've got him now," and the best of my recollection, his caustic sort of attitude and his bullish attitude, he was making gestures, you know, "it's all over for Hastings."

Mr. ANDERSON. Now, Mr. Gunn, have you been active in Dade County South Florida politics throughout your life?

Mr. GUNN. Yes, I have.

Mr. ANDERSON. And have you ever been involved in campaigns in which the mayor was running for his office as mayor?

Mr. GUNN. Yes, I have.

Mr. ANDERSON. Were you a supporter of the mayor, or in opposition to him?

Mr. GUNN. At one point in my life I was a supporter of him, and then I think it was about 12 years ago, maybe a little bit longer—I owned a newspaper in the south end of Dade County called The South Dade Observer, and I interviewed candidates and I also was involved in a lot of elections at that time.

Mr. ANDERSON. Specifically, were you involved in the campaign by Jack Orr against the mayor?

Mr. GUNN. Yes.

Mr. ANDERSON. What was your position in that campaign?

Mr. GUNN. I didn't interview Steve Clark, I just endorsed Jack Orr in my paper and he got very indignant over that and——

Mr. ANDERSON. What was the outcome of that election?

Mr. GUNN. We won the election, we beat his machine.

Mr. ANDERSON. Now, was that the only time the mayor has lost his job as mayor over the past 10 years?

Mr. GUNN. Yes, it has and he directs that towards me, I think.

Mr. ANDERSON. No further questions, Mr. Chairman.

The CHAIRMAN. Is there cross examination of the witness?

Mr. BARON. There will be.

[Pause.]

CROSS EXAMINATION

Mr. Gunn, you testified on direct that Mayor Clark approached you several weeks after you had testified for Judge Hastings at his trial, in the criminal trial back in 1983, is that correct?

Mr. GUNN. Yes.

Senator BRYAN. Mr. Chairman, could I interrupt? It would be helpful for many of us if we could get the time and dates.

Mr. BARON. I think my question included the year. It was 1983, wasn't that?

Mr. GUNN. Yes, sir.

Mr. BARON. And that would have been in the early part of the year, January or February?

Mr. GUNN. Yes, sir.

Mr. **Baron**. I will to include that, when I know a date, in my questions.

And you say it was approximately three weeks after that that you were approached by Mayor Clark and asked why did you testify for Judge Hastings?

Mr. **Gunn**. Yes, sir.

Mr. **Baron**. Isn't it a fact, sir, that you never did testify for Judge Hastings? Your testimony was excluded, should it not?

Mr. **Gunn**. You are asking me a legal question, which I am not a lawyer and I cannot answer. But to answer your question direct, I was in the courtroom for maybe a period of an hour and I think that there were some legal maneuvering that my testimony was not——

Mr. **Baron**. In fact, your testimony was excluded and the judge characterized your testimony as the most outrageous testimony he had ever heard. Isn't that a fact, sir?

Mr. **Gunn**. I don't know, in your line, the way you said it, it happened in that fashion. I believe——

Mr. **Baron**. That is what the judge said.

The **Chairman**. Counsel, let's let the witness respond to the question.

Mr. **Gunn**. What I read in the paper was my statement that I made in reference to rainmaking was not allowed, because I made the mistake of saying that this is common knowledge in the legal profession, and I believe that the judge was from the State of Maine and he was very——

Mr. **Baron**. Mr. Chairman, could I ask the witness to be responsive to my question?

The **Chairman**. I believe the witness can certainly explain his answer and I believe that is what he's doing. If you would go ahead and complete your answer.

Mr. **Gunn**. Well, I'm trying to, sir. You know, I don't know what he wants.

The **Chairman**. Maybe you could state the question again, counsel, and that would——

Mr. **Baron**. Is it not a fact that your testimony was—every word of your testimony was not permitted to go before the jury, it was excluded by the judge because he said it was the most outrageous testimony he had ever heard—yes or no?

Mr. **Gunn**. I cannot answer that, because I was not in the courtroom at the time the judge made—if he did make a statement of that fact. The only thing that I can answer is what I tried to answer, that I read in the newspaper.

Mr. **Baron**. Is it not a fact, sir, that he also characterized you as a wholly irresponsible witness, Judge Gignoux did on that occasion?

Mr. **Gunn**. That I don't know.

Mr. **Baron**. Sir, you were—since 1967, is it not a fact, sir, that you have been on disability?

Mr. **Gunn**. Yes, sir, and——

Mr. **Baron**. And you have not held a job since 1967?

Mr. **Gunn**. I have been drawing disability retirement.

Mr. **Baron**. And is it not a fact, sir, that you spent approximately three-and-a-half years in a mental hospital after you were discharged from the service?

Mr. **Gunn**. That is not true and I told you that earlier today.

Mr. **Baron**. You spent three-and-a-half years in a hospital, correct?

Mr. **Gunn**. Right.

Mr. **Baron**. And was that not in conjunction with a mental disability, a post-war syndrome, I believe you called it?

Mr. **Anderson**. Mr. Chairman, I would object on the grounds of relevancy.

Mr. **Gunn**. I really think that that is very undermining. I fought for my country and I came out with a little post-war syndrome and I'm kind of proud of what I did and I don't think that I'm crazy, if that is what you're trying to predicate here.

Mr. **Baron**. I'm just asking you a simple question.

Mr. **Gunn**. And I never spent three-and-a-half years in a mental institute, as you said, and I told you that upstairs. I believe that's the most under——

Mr. **Baron**. You spent three-and-a-half years in a hospital, correct?

Mr. **Gunn**. Yes, I spent approximately three-and-a-half years in a hospital after I got back from Korea and I told you that 70 percent of my disability is physical and 30 percent is for post-war syndrome.

Mr. **Baron**. And the time that you spent, you said that you had suffered from frost-bite, and did that require three-and-a-half years of hospitalization?

Mr. **Anderson**. Mr. Chairman, the witness I think can protect himself, but I think we're pushing it a bit here.

The **Chairman**. Counsel, if you want to question the witness about the truth or falsity of any of his statements, obviously that's appropriate. I think that you need to pose questions to him that go to that issue, though.

Mr. **Baron**. Mr. Chairman, it seems to me that if this gentleman—and I'm not attacking his quality as a human being, but if the gentleman has suffered from a mental disability, I think it goes to his credibility. If that disability has been such that he has been unable to be employed since 1967, has been drawing disability at least in part on the basis of his mental condition, it seems to me that that is pertinent responsible testimony to elicit before the committee.

Mr. **Anderson**. Mr. Chairman, may I respond?

Mr. **Baron**. He has made some very serious allegations about some people in public office and you have to be able to evaluate his credibility.

Mr. **Anderson**. May I respond?

The **Chairman**. Let me just indicate that the witness has responded on the nature of his disability, and if there is a follow-up question on that, it can be asked, but I think that that is as far as we need to go on the issue.

Mr. **Baron**. Now, this information that you have come forward with, when did you first advise Judge Hastings' lawyers about this?

Mr. **Gunn**. I think it was about a month ago that I was called in and said that I'd possibly be a witness and I talked to Mr. Anderson.

Mr. **Baron**. All right. And prior to that time, had you ever told this to anybody, any public authorities or anyone else?

Mr. **Gunn**. No, I hadn't. The incident involving Mr. Rennick and Glenn Whittle, I took Senator Rennick to Patricia Williams' office about three times during this course, which was not brought out in the testimony, and I think she wrote a letter for him, and this was all pertaining to the Glenn Whittle meetings.

Mr. **Baron**. Do you know anything about the leak of the wiretap, do you have any knowledge about it?

Mr. **Gunn**. No, just hearsay or what I've read in the paper.

Mr. **Baron**. I'm asking whether you have any knowledge.

Mr. **Gunn**. No.

Mr. **Baron**. OK. And how well do you know Judge Hastings?

Mr. **Gunn**. I've never palled around with Judge Hastings, but I've known him I guess over 30 years and I've always admired him. You know, I think he's a great person and I'd like to consider him as my friend.

Mr. **Baron**. Do you recall testifying out of the presence of the jury regarding your relationship with Judge Hastings, about you and he, back in the Sixties, used to run together and words to the effect that you were going to run the State of Florida together politically? Do you remember testifying to that?

Mr. **Gunn**. I remember testifying not to that specific statement that you made, that we were all young together and we had political ambitions and I could have made a statement to that effect for myself, because I had ambitions to get involved in politics, which I——

Mr. **Baron**. If the Chair will bear with me for 1 minute, since the witness' testimony was different than we had originally anticipated. It may take me a moment to find this.

The **Chairman**. Fine.

[Pause.]

Mr. **Baron**. How often did you see Judge Hastings annually?

Mr. **Gunn**. Oh, I'd say about every year-and-a-half I'd run into him at some political function.

Mr. **Baron**. About once every year-and-a-half?

Mr. **Gunn**. A year-and-a-half or every two years and I wouldn't go over and grab his hand or anything, I would just acknowledge seeing him.

Mr. **Baron**. I found the reference in your testimony. Let me read something to you and ask if it refreshes your recollection. You testified—well, the question put to you was, "You mentioned you've been indicted and prosecuted and found not guilty, is that correct?" Your answer was yes. "Question: When was that? Answer: That was back when I was running with Judge Hastings, back in Fort Lauderdale, when we thought we was going to run the State of Florida politically together." Do you recall testifying to that effect?

Mr. **Gunn**. I answered this upstairs. I recall making a similar statement in the court at that time, yes.

Mr. BARON. Well, I'm asking you, then, what was your relationship with Judge Hastings? You say you run into him once every 18 months, is that——

Mr. GUNN. You've got to understand that when I was involved in the insurance and bonding business, which was in Broward County, and I moved to Dade County, which is some 35 miles away—if I'm answering the question right—and he lives in Broward County.

Mr. BARON. When you met with me, sir, earlier today, wasn't the first thing you asked me was whether you could get protection for you and your son, because you feared for your safety because you were going to testify here today? Is that correct?

Mr. GUNN. That's correct. None of that has been brought out.

Mr. BARON. I have no further questions.

The CHAIRMAN. Are there additional questions on direct?

[Pause.]

Counsel, there will be another opportunity to do additional cross examination after Mr. Anderson asks his other questions. Why don't we do it in that order?

REDIRECT EXAMINATION

Mr. ANDERSON. Mr. Gunn, listen to my questions carefully, if you would, sir. During my direct examination of you, did I explore all of the information that you have concerning Mayor Clark and Glenn Whittle? Did I inquire into—are there other things you know about them?

Mr. GUNN. Sir, there is.

Mr. ANDERSON. And was your concern for protection related to the fact that if——

Mr. BARON. Could we not lead the witness? I would object to the form of that question.

Mr. ANDERSON. The Chair ruled before the beginning that some leading here would——

The CHAIRMAN. To some extent, but I do think it would be good to allow the witness to testify, if possible.

Mr. ANDERSON. I will adhere to the Chair's ruling.

Why—when you discussed with Mr. Baron some concern over protection for you and your son, what were you referring to, sir?

Mr. GUNN. The gist of the conversation that took place in front of Mr. Whittle on the two occasions in reference when Senator Rennick and I went over, the reasoning for the protection.

Mr. ANDERSON. I tried not to open it, but now tell the committee what the gist of that conversation was.

Mr. GUNN. The gist of the first travel over to talk to Glenn Whittle was Senator Rennick was—Rennick went over to try to get Glenn Whittle to use his influence with the Mayor's office to help him collect a fee that he felt that he earned for $100,000 involving the zoning of the Joe Robbie Stadium in Miami.

Mr. ANDERSON. And that's the Miami Dolphin Stadium, with the sky boxes?

Mr. GUNN. Right.

Mr. ANDERSON. And what was Mr. Whittle's response at that time?

Mr. GUNN. To the best of my recollection, Mr. Whittle said that he would talk to the Mayor and he would get back with Dick Rennick.

Mr. ANDERSON. Now, on the occasion, the first occasion when you and Mr. Rennick were at Mr. Whittle's house, how long were you there?

Mr. GUNN. I'd say about an hour——

Mr. ANDERSON. And——

Mr. GUNN [continuing]. Give or take 15–20 minutes.

Mr. ANDERSON. And on the second occasion, how long were you there?

Mr. GUNN. About the same length of time.

Mr. ANDERSON. Were topics other than Judge Hastings the primary reason why you were there on both occasions?

Mr. GUNN. I was there because I was invited to overhear what was going to take place between Dick Rennick and Glenn Whittle.

Mr. ANDERSON. Am I correct, you were invited to discuss topics other than Judge Hastings?

Mr. GUNN. Yes.

Mr. ANDERSON. Now, Mr. Gunn, when were you in the hospital, what time period?

Mr. GUNN. When I got out of Korea—I think the attorney kind of put a blatant picture of my character and——

Mr. ANDERSON. Attorneys do that.

Mr. GUNN. When I got——

Mr. BARON. I'm going to object to that and ask that that be stricken from the record. I resent it.

The CHAIRMAN. The comment was a general one. The witness can go ahead and respond to the question.

Mr. GUNN. In 1950, when I was "airvac'd" off the Chosen Reservoir, I went onto the Hospital Ship Constellation. My post-war syndrome that he's referring to as a mental institute was from—somehow I blocked out in my mind, as the doctors said, "I turned my lights off." Usually, when you see a traumatic thing or something traumatic happens—and it happens to women who get raped or other people that have airplane crashes, they block it out of their mind and then it comes back.

Now, I could not, in the long-term period, bring back what happened on the Chosen Reservoir, and the beginning, when I was first getting treatment, my father refused to sign documents, they said let's give this guy a couple of belts of shock treatment to bring him around and my dad would not sign the documents. That's why the long-term, and I don't consider it was a psychiatric ward. I was in a medical ward with other patients that had limbs and legs off and everything else.

Mr. ANDERSON. And when were you released from that hospital?

Mr. GUNN. It's not one, it was——

Mr. ANDERSON. When, when was the last time you were hospitalized on this condition?

Mr. GUNN. I went before the Naval Medical Board in Charleston, South Carolina, and there was about 16 people around tables and they brought up my whole medical record and they retired me on disability retirement.

Mr. ANDERSON. When did that occur, Mr. Gunn?

Mr. GUNN. 1953. OK. Then the Senate and the House passed a bill, I think it was around 1967, where I could convert my retirement from the Marine Corps over to disability through the VA.

Mr. ANDERSON. And that increased your pension?

Mr. GUNN. Quite considerably.

Mr. ANDERSON. Over the intervening years, have you owned your own businesses, sir?

Mr. GUNN. I've always owned my own businesses.

Mr. ANDERSON. Have you owned a restaurant?

Mr. GUNN. I owned a restaurant with other members of my family, with 74 employees. I've owned a marina and a restaurant and an apartment complex down in the Keys.

Mr. ANDERSON. Did you run those businesses?

Mr. GUNN. I was involved with the family and we all ran it, we are all part of it.

Mr. ANDERSON. Were they profitable?

Mr. GUNN. Very profitable.

Mr. ANDERSON. I have no further questions.

The CHAIRMAN. Is there additional cross examination?

RECROSS EXAMINATION

Mr. BARON. Sir, was the fact that you were on disability consistent with your being profitably employed, or were you allowed to do both?

Mr. GUNN. For a certain period of time, you're not allowed to work on a clock, but there's no law against owning a business when you're on disability.

Mr. BARON. Isn't it a fact that at least one or more of these business ended up being bankrupt? I believe you testified to that?

Mr. GUNN. Here again, you're trying to put a very bleak picture before this committee and, to answer you correctly, is yes, but I would like to make an explanation.

Mr. BARON. Please go ahead.

Mr. GUNN. I filed bankruptcy in Miami, in Federal court, along with my wife, involving a marina in the Florida Keys. We bought the marina for in the area of $170,000. We sold the marina to a group of lawyers and a finance man that had come down to the Florida Keys and bought several businesses. One was a hotel for $13 million.

Senator RUDMAN. Mr. Chairman, excuse me. The witness can finish his answer, but I must say that the time frame that this committee has facing it, I have to say to counsel that, quite frankly, I think you control the questioning better, get briefer answers. Mr. Chairman, I respect this witness, I feel sorry for the financial troubles he's had, but quite frankly, with an August 4th deadline, if we continue this kind of examination, we will be here on Labor Day, with no intervening recess.

The CHAIRMAN. Would the audience please control their enthusiasm. Counsel, could you get right to the point of——

Mr. BARON. Mr. Chairman, I don't want to cut the witness off. If he just answers my question, that's fine, but then he wants an opportunity to explain. If I cut him off, then I'm not being fair to him, so I'm kind of caught between a rock and a hard place.

The **Chairman**. Mr. Gunn, could you give us a short explanation?

Mr. **Gunn**. I sold the business for half a million dollars. I had a lawyer, he told me to take a down-payment, I took a down-payment, the down-payments were $50,000 in bad checks. These were lawyers that bought this business and several others, assuming that there was going to be legalized gambling in the Florida Keys. I tried to get the business back, they filed bankruptcy, I had a bankruptcy lawyer for a year-and-a-half, he gets in an automobile accident, he's almost dead, and I'm trying to get my business back. I'm making payments on the first mortgage for almost a year, a year-and-a-half. I couldn't handle it any more, so I was advised to file bankruptcy so I could protect the business and get it back after these guys got through with it.

It didn't happen like that. All these guys went to jail. I didn't get my business back. The guy that had the first mortgage got it back because the bankruptcy judge said you've got 10 days to come up with $180,000 in cash and that's how it happened. It was a protective matter.

Mr. **Baron**. We appreciate the answer, except one very—a couple of questions. How old are you?

Mr. **Gunn**. 58 years old.

Mr. **Baron**. And I believe you testified that you've known the Mayor since some class? I didn't catch it.

Mr. **Gunn**. I think I said third or fourth grade. His brother was in my grade, his brother, Dick Clark was in my grade at Jayzoo School in Miami.

Mr. **Baron**. And is that when you knew the Mayor?

Mr. **Gunn**. I knew the Mayor, the first time I laid eyes on him is when his brother called him in reference to a train accident, and I only lived maybe half-a-mile from him.

Mr. **Baron**. The Mayor would seem, it seems to me, a lot older than you are.

Mr. **Gunn**. Yes.

Mr. **Baron**. He's substantially older than you are, am I correct?

Mr. **Gunn**. I wouldn't say he's substantially older than me. I'm 58.

Mr. **Baron**. I'm just trying to understand how you were in the same grade together, because——

Mr. **Gunn**. I didn't say him.

Mr. **Baron**. OK.

Mr. **Gunn**. His brother Dick.

Mr. **Baron**. OK. Thanks.

The **Chairman**. I have no questions of this witness. Do any of the committee members have questions?

[No response.]

Is there any reason this witness cannot be excused?

[No response.]

Mr. Gunn, you are excused. We very much appreciate your testimony.

If Respondent would please call your next witness.

Mr. **Gunn**. Thank you, sir.

Mr. **Anderson**. Respondent calls Jesse McCrary.

The **Chairman**. Would you raise your right hand, please?

Do you, Jesse McCrary, swear and affirm that the evidence you shall give in the case now pending between the United States and Judge Alcee L. Hastings shall be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. **McCrary**. I do, sir.

The **Chairman**. Please be seated.

TESTIMONY OF JESSE J. McCRARY, JR.

DIRECT EXAMINATION

Mr. **Anderson**. Mr. McCrary, would you tell the committee your full name?

Mr. **McCrary**. Jesse J. McCrary, Jr.

Mr. **Anderson**. And what is your profession, sir?

Mr. **McCrary**. Lawyer.

Mr. **Anderson**. And are you in private practice at present?

Mr. **McCrary**. Yes, sir.

Mr. **Anderson**. And are you with a law firm?

Mr. **McCrary**. Yes, sir, the law firm of McCrary and Self.

Mr. **Anderson**. Mr. McCrary, let me first direct your attention to September 6, 1985. Do you recall attending what has been shown in evidence to have been a conference sponsored by the Metro Miami Action Plan on that day?

Mr. **McCrary**. Yes, sir, I do.

Mr. **Anderson**. What was your role at the opening session, if you recall?

Mr. **McCrary**. I had been asked by the committee to introduce Judge Hastings, who was the guest speaker at that luncheon.

Mr. **Anderson**. And beyond that recollection, do you have any recollection of the events that occurred that morning?

Mr. **McCrary**. No, sir, I do not.

Mr. **Anderson**. Did you see Judge Hastings talk with Mayor Clark?

Mr. **McCrary**. No, sir, I did not.

Mr. **Anderson**. Now, Mr. McCrary, where were you seated during the opening ceremony?

Mr. **McCrary**. I was seated next to Judge Hastings, and I don't recall whether I was to his right or to his left, but I was seated directly next to him.

Mr. **Anderson**. Was that at the head table?

Mr. **McCrary**. Yes, sir, a platform, a raised platform.

Mr. **Anderson**. Subsequent to September 6, 1985, when was the next time you were interviewed concerning the events that occurred that morning?

Mr. **McCrary**. I've never been interviewed about them.

Mr. **Anderson**. Let me go back. I take it you know Judge Hastings. When did you first meet him?

Mr. **McCrary**. September 1962.

Mr. **Anderson**. Where was that?

Mr. **McCrary**. Law school.

Mr. **Anderson**. And what, were you classmates, or what year were you in at that time, what year were you in?

Mr. **McCrary**. I entered law school in September of 1962. Judge Hastings had been there a year before I got there.

Mr. ANDERSON. And what law school was that?

Mr. MCCRARY. Florida A&M University.

Mr. ANDERSON. Do you know a person named Hemphill Pride?

Mr. MCCRARY. Yes, sir, I do.

Mr. ANDERSON. Where did you meet him?

Mr. MCCRARY. I met him at the law school also, sir.

Mr. ANDERSON. And what class was he in, if you recall?

Mr. MCCRARY. He was in the second or third class, the same class as Judge Hastings was in. That was the third year class, I do recall.

Mr. ANDERSON. After you graduated from law school, what did you do?

Mr. MCCRARY. I graduated from law school in April of 1965 and went to Fort Lauderdale, seeking a job, primarily going to south Florida because they offered an in-house bar review course, so I wanted to work in the south Florida area and go to the bar review course, and I became gainfully employed with the law firm of Allen & Hastings.

Mr. ANDERSON. Was Judge Hastings a partner in that law firm?

Mr. MCCRARY. Yes, sir.

Mr. ANDERSON. Now, do you know or did you know a person named William Borders?

Mr. MCCRARY. Yes, sir, I did.

Mr. ANDERSON. And do you recall when you met him?

Mr. MCCRARY. I met Mr. Borders, I believe, in the early seventies, and I would guess, Mr. Anderson, about 1970 or 1971.

Mr. ANDERSON. And how did you happen to meet Mr. Borders?

Mr. MCCRARY. I met Mr. Borders in connection with the National Bar Association.

Mr. ANDERSON. And do you recall where you first met him?

Mr. MCCRARY. I believe I first met him in Miami, when they had the bar association at the Four Ambassadors Hotel.

Mr. ANDERSON. Now, Mr. McCrary, over the course of your time in practice, have you held any public positions?

Mr. MCCRARY. Yes, sir, I have.

Mr. ANDERSON. Could you summarize those for the committee, just briefly, to introduce yourself?

Mr. MCCRARY. If we've got enough time, I will.

Mr. ANDERSON. The highlights.

Mr. MCCRARY. I was an Assistant Attorney General for the State of Florida, I've been an Assistant School Board Attorney for Metropolitan Dade County, I've been a judge on the Industrial Relations Commission—that no longer exists, it was Florida's Court of Administrative Appeals—I've served on some eight statewide boards and commissions, I served as Secretary of State for the State of Florida under Reuben Askew, I served as a Commissioner on the Constitution Revision Commission, I served as Chairman of Florida's Corrections Task Force—I've got some more, but that highlights it.

Mr. ANDERSON. Mr. McCrary, at my request, did you have your secretary telefax us a copy of your resume?

Mr. MCCRARY. Yes, sir.

Mr. ANDERSON. May I approach the witness, Mr. Chairman?

The CHAIRMAN. You may.

Mr. ANDERSON. I show you what has been marked Respondent's exhibit No. 132 and ask if you can identify that.

Mr. McCRARY. Yes, sir, I can.

Mr. ANDERSON. What is it?

Mr. McCRARY. It is a personal resume of mine, and the last two sheets were taken as part of a resume of our firm resume that only deals with me, the last two sheets, but had it been completed, it would have listed all the lawyers in our firm and what we do. It is sort of a firm resume.

Mr. ANDERSON. And is that an accurate, to the best of your knowledge, description of who Jesse McCrary is?

Mr. McCRARY. Mr. Anderson, it's accurate but it's kind of old. There are some other things that should be added to it.

Mr. ANDERSON. Mr. Chairman, at this point I would ask that that resume be admitted, and I do have copies to distribute.

The CHAIRMAN. Is there objection?

Mr. BRYANT. No objection.

The CHAIRMAN. It will be admitted.

[The document referred to was marked Respondent's Exhibit No. 132 and was received in evidence.]

Mr. ANDERSON. Mr. McCrary, let me direct your attention to the year 1981. At that time, were you and Mr. Borders—did you know William Borders fairly well by 1981?

Mr. McCRARY. Yes, sir, I did.

Mr. ANDERSON. Do you recall any legal matters on which you consulted him or he consulted you during that year?

Mr. McCRARY. Yes, sir.

Mr. ANDERSON. Specifically, what is the first occasion you recall today?

Mr. McCRARY. The first occasion I recall is that, on an afternoon in May, on a Sunday afternoon in May, I received a call from a lady who represented herself to be a Mrs. Dredge, who said that her husband had been arrested, and I believe she said to me that she had been recommended to me as a lawyer by a William Borders or a Pettit or a lawyer named Pettit. Both names were mentioned, as I recall. I do seem to recall that, even prior to getting the call from this lady, that Mr. Borders had called me and said that I am recommending a client to you. I'm not absolutely sure, but I seem to recall that.

I then told this lady that there was nothing—sort of comically, I said, "Lady, if he's in jail, you don't need a lawyer, you need a bail bondsman," and there was nothing I could do for her husband on Sunday afternoon. She indicated to me that her husband had to be in court on Monday morning.

After speaking with her, I told her that, one, I would come and meet with her husband on Monday morning prior to the bond hearing, and in fact I did go and meet with Mr. Dredge on that Monday morning, about 8:00 o'clock I met with him in the holding cell on the Magistrate's floor.

Mr. ANDERSON. And thereafter, did you represent Mr. Dredge at the bond hearing?

Mr. McCRARY. Yes, sir, I did represent Mr. Dredge at the bond hearing.

Mr. **Anderson**. And did you continue to represent Mr. Dredge in that or any other matter?

Mr. **McCrary**. No, sir—let me change that. I did continue to represent Mr. Dredge, not in that matter. At the time of his arrest, DEA seized Mr. Dredge's automobile. At some time after the bond hearing, I was no longer involved in Mr. Dredge's criminal case, because the indictment had come out of Baltimore, and somewhere between that time or shortly after the bond hearing, there was a removal hearing scheduled, but I believe that Mr. Dredge voluntarily went to Baltimore. I was then told by Mr. Dredge, by way of a telephone conversation or some communication, that Borders was not going to represent him, but that a lawyer named Pettit was.

I then—I believe he asked me to call Pettit to tell him what had transpired, because the Magistrate in Miami had ordered Mr. Dredge, in order to get out on bond for a $500,000, I believe, personal surety bond, with the proviso that he surrender his passport to me, as an officer of the court, and that was done. I informed Mr. Pettit of that and, to be truthful, that's all I know about his criminal case.

There was a matter of the automobile, that Mr. Dredge had come to me and asked me—he received a letter sometime later from DEA, indicating that if he wanted his automobile, he would have to file a petition for remission, and the letter, sort of the general letter, the standard language, indicated to him that you should file that petition for remission within "X" number of days and there are two ways to do it. You could do it by petitioning DEA or you could do it by filing a petition in United States District Court.

Mr. **Anderson**. Did he retain you to handle that matter for him?

Mr. **McCrary**. I don't remember whether I got paid from him subsequently, but I did handle the matter.

Mr. **Anderson**. Did you get paid for your appearance at the bond hearing, if you recall?

Mr. **McCrary**. Yes, sir, I did.

Mr. **Anderson**. About how much, do you recall?

Mr. **McCrary**. I believe I charged him $1,500 for that one appearance.

Mr. **Anderson**. Do you recall at this time any discussion between yourself, by telephone or otherwise, and Mr. Borders regarding your representation of Mr. Dredge or anything else about Mr. Dredge?

Mr. **McCrary**. I seem to recall that after the bond hearing that either on that same day or the next day I did call Mr. Borders to tell him what had transpired in court, and my reason for calling him was that he was the lawyer who referred the matter to me, and I took the opportunity to call him quickly about it rather than try to write it out so that he would at least know what had happened to his client and/or Mr. Pettit's client, and I had the impression that either one or both of them were representing him in some fashion.

Mr. **Anderson**. Do you recall further conversations in this period with Mr. Borders concerning William Dredge?

Mr. **McCrary**. I don't recall them. I probably talked to him about the remission petition, but I do recall sending to a lawyer in Baltimore, and I believe it was a Mr. Spaeder, and I—the documents I had regarding the remission, because when the remission petition was denied, I do recall sending him that documentation saying that that's it.

The CHAIRMAN. Now, counsel, in the spirit of Senator Rudman's earlier comments, is there a point that we're trying to get at here? I mean, I think the witness is responding to your questions, but I'm just not sure that all of the information we're receiving is pertinent to the issues before us. Perhaps it is.

Mr. ANDERSON. Mr. Chairman, I certainly can move through it more quickly. The problem is I, as we dealt with the argument earlier this morning, there is a massive data over ten-and-a-half days that has been coming in, and I'm reluctant not to meet it all with documents. I truly would rather move more rapidly, but——

The CHAIRMAN. Counsel, you'll be given discretion to do it the way you want, but I do think there's been nothing said as yet by the witness that I believe meets any particular allegation, or at least if it does, it's not clear to me how.

Mr. ANDERSON. Mr. Chairman, if the Chair will be indulgent on the scope of redirect, let me move through this quickly. Let's see what comes out in the clash of anvils and then we'll see what we have to do.

Mr. McCrary, directing your attention to the weekend of September 11th, the 13th, 1981, do you recall that weekend?

Mr. McCRARY. Yes, sir. I do.

Mr. ANDERSON. Where were you that—can you tell the committee specifically focusing on that weekend from your perspective what happened?

Mr. McCRARY. Yes, sir. In June of that year I had been contacted by a Dr. Paul Moore, who is the vice president of Norfolk State College, a person that I had known at Florida A&M, who asked me by way of letter whether I would serve as their banquet speaker for an awards banquet at the YMCA in Norfolk. That was in June.

Mr. ANDERSON. When was the banquet scheduled for?

Mr. McCRARY. The banquet was scheduled for September 11, 1981. I accepted his invitation. They furnished me with a ticket to come to Baltimore—I mean, not Baltimore, to Norfolk. I went to Norfolk and upon leaving I spoke that night of September 11th, and then the morning I had told Dr. Moore prior to that time that I was going from Norfolk to Washington, and if there was a difference in that round trip airfare, I would certainly reimburse them for it. I then came to Washington, DC.

Mr. ANDERSON. Why did you go to Washington?

Mr. McCRARY. I came to Washington, DC to see my daughter who had graduated from Howard Law School in June of 1981 and was still living in the DC area. I was concerned about her, whether she was going to work, going to practice law, taking the bar, and finally getting her off my payroll, you know.

Mr. ANDERSON. Prior to going to Washington, had you made arrangements to see anyone else?

Mr. McCRARY. Yes, I did.

Mr. ANDERSON. Who?

Mr. McCRARY. I made arrangements to see Donna Mendez.

Mr. ANDERSON. And who is Donna Mendez—what was her relationship to you?

Mr. McCrary. Donna Mendez had worked in my office in Miami as a receptionist, and after she got in law school she worked for me as a law clerk. She had worked for me since about 1978 at that time as a receptionist, and I had encouraged her. I thought she was a fairly bright young lady, and I encouraged her that she ought to try take the test to go to law school, and hopefully I was instrumental in helping her get in school, and I had wanted to see her at the same time that I was here because she and my daughter had been in school together, notwithstanding the fact that my daughter had finished in June.

Mr. Anderson. Just so we have the cast of characters, that daughter, what is her name, your daughter?

Mr. McCrary. Bonnie McCrary.

Mr. Anderson. Now, how far in advance of your trip September 12th had you contacted your daughter to tell her you'd be in town, if you——

Mr. McCrary. I would guess two or three days. I really can't remember, but it was in advance of my trip.

Mr. Anderson. And how far in advance had you contacted Miss Mendez?

Mr. McCrary. I would have guessed about the same time.

Mr. Anderson. OK. Had you told anyone else about your plans to be in Washington that weekend?

Mr. McCrary. Mr. Anderson, I really don't recall, but if——

Mr. Anderson. Had you talked about it with Judge Hastings?

Mr. McCrary. Oh, yes. I had spoken to Judge Hastings. I spoke to Judge Hastings even prior to the trip. In some casual conversation, I had mentioned to him that I was going to Norfolk, Virginia to speak for Paul Moore, who is a person that both of us knew at Florida A&M, and that when I left there I was going into Washington to see my daughter. He then said, "That's interesting, because I'm going to be in Washington on that same day."

In my mind, I thought he meant he was going to be there on September 11th, but it turned out that he meant he was going to be there on the date that I was going to be in Washington, i.e., the 12th.

Mr. Anderson. And what, if anything, did you and Judge Hastings make by way of arrangements for the day of September 12th?

Mr. McCrary. I had said to him, I asked him, "Where are you staying in Washington?" He said that he was staying—I don't recall where he said he was staying. I know it was not at the same hotel where I was staying, and I said to him, "Oh, why don't you stay over at the Sheraton because it's close to Howard, and I'm going to see my daughter there. We'll be in the same place." And he said, "Yes, he would."

Mr. Anderson. When did you arrive in Washington?

Mr. McCrary. I arrived in Washington on the morning of the 12th, and I'm guessing, somewhere about 10:30 or 11:00 o'clock.

Mr. Anderson. And what did you do when you arrived?

Mr. McCrary. I took a taxi from National Airport to the Sheraton Hotel and checked in.

Mr. Anderson. And was Judge Hastings there or did you meet him then? What happened?

Mr. McCrary. When I checked in, I did ask the lady at the desk whether or not she had a Judge Hastings registered. She indicated that she did have one registered, and I said to her, "Can you give me a room on the same floor where he is, or more particularly give me a room that's close to his?" And she originally said she didn't have one, I think she said she didn't have one, and then she said, "Oh, yes, we do. I have one. In fact, I have one that's next door to him."

Mr. Anderson. And did you take that room?

Mr. McCrary. Yes, sir. I did.

Mr. Anderson. Did you see Judge Hastings that day?

Mr. McCrary. Yes, sir. I did.

Mr. Anderson. And what time was that?

Mr. McCrary. Approximately, I'm guessing, maybe an hour-and-a-half after I got there, because when I checked in my room, I then went and knocked on his door, and there was no answer.

Mr. Anderson. How did you come to meet him then?

Mr. McCrary. Sometime after that, maybe an hour-and-a-half or so, Judge Hastings knocked on my door, and I opened it and he had indicated to me that he had been out somewhere, and I don't recall where he say he had been.

Mr. Anderson. Now, during that Saturday, did you see your daughter, Bonnie?

Mr. McCrary. Yes, sir. I did.

Mr. Anderson. About what time was that to the best of your recollection?

Mr. McCrary. Best of my recollection, it was late afternoon. I called her home as soon as I got into my room and her roommate that she was living with at the time indicated that Bonnie was not at home. I then told her to tell her, "Well, tell her her father's in town and to call me over here at the hotel." And so I really sat around waiting to hear from her at that time, and as best I recall, she must have come over 4:30, 5:00, I can't pinpoint it, but within an hour or so.

Mr. Anderson. How much time, to the best of your recollection, did you spend with her?

Mr. McCrary. I must have spent a couple or three hours with her, because she then had some other engagement that I said, "It's a date, and you've got boys more important than your Daddy," you know, but she had something to do.

Mr. Anderson. And did you that day see Donna Mendez?

Mr. McCrary. Yes, sir. I did.

Mr. Anderson. And about what time was that?

Mr. McCrary. I believe I saw Donna Mendez during the time that my daughter was there I am reasonably comfortable that Donna Mendez showed up too, because at one point I was there talking with both of them.

Mr. Anderson. And after your daughter left, did Miss Mendez remain?

Mr. McCrary. Mr. Anderson, I don't remember whether she remained or whether she left and came back. I really do not remember, but I was with her later in the evening.

Mr. Anderson. And when you were with her later in the evening, was Judge Hastings also there?

Mr. McCrary. Yes, sir.

Mr. Anderson. And do you recall what time that group assembled?

Mr. McCrary. I don't recall what time it assembled. I can recall that Miss Mendez was there, that Judge Hastings was there, there was also another lady there with Judge Hastings. At some point during the evening, a third lady either appeared or the lady who was with Judge Hastings left and came back with a lady. I do not recall which way it was, but during the course of the evening there were three ladies there, Miss Mendez, and the two other ladies, and I tell you, I don't know who they were, had never seen them before, and would not know them if I saw them today.

Mr. Anderson. Would you recognize their—well, let me just try. Do you recall the name Dabreau?

Mr. McCrary. I don't independently recall it. It was that—she had an odd name. I don't independently recall it, no, sir, I don't.

Mr. Anderson. And at some point in the evening, if I'm understanding you, there was yourself, Judge Hastings, Miss Mendez, and two other women. Do you recall by what time that group was complete?

Mr. McCrary. That had to be complete by 8:30 or 9:00 o'clock, sir.

Mr. Anderson. OK. And what did you do then?

Mr. McCrary. We sat around, talked for a long time, sort of about nothing. One of the items that I seem to recall is that one of the ladies I believe was not a U.S. Citizen or maybe I shouldn't say that, she had some connection with a foreign country, one of the Caribbean countries.

Mr. Anderson. And you talked about that?

Mr. McCrary. There was some talk about something in the Caribbean and general conversation.

Mr. Anderson. And did there come a time when you were joined by an additional person?

Mr. McCrary. Yes, sir.

Mr. Anderson. Do you recall when that was?

Mr. McCrary. Sometime after, I'm guessing, sometime after 9:00 o'clock there was a knock on the door.

Mr. Anderson. Who went to the door?

Mr. McCrary. Judge Hastings went to the door.

Mr. Anderson. What happened then to the best of your recollection?

Mr. McCrary. Best of my recollection, he made some remark, "Look who's here," or "What are you doing here?"

Mr. Anderson. And who in fact was there?

Mr. McCrary. William Borders.

Mr. Anderson. What did you do then?

Mr. McCrary. We then went down to eat, and I don't believe that we went down to eat immediately because there were the introductions around, "This is Bill Borders, and this is," whatever these lady's name. I think he might have known Miss Mendez as a result of me, because I had sort of tried to help her say, "If you got real problems in the DC area, here are some people to call," and just that sort of thing. Same as I had done with my daughter.

Mr. ANDERSON. And eventually the entire group went down to dinner?

Mr. McCRARY. Yes, sir.

Mr. ANDERSON. And did Mr. Borders join the group for dinner?

Mr. McCRARY. Yes, sir.

Mr. ANDERSON. During the course of that dinner, did Judge Hastings and Mr. Borders or did you and Mr. Borders have any private conversations or were you all at the dinner table throughout?

Mr. McCRARY. We were all at the dinner table throughout.

Mr. ANDERSON. And after dinner, what happened?

Mr. McCRARY. I don't really recall, Mr. Anderson. I don't recall. I honestly can't recall whether or not. There was a disbursement, let me put it that way. I don't know whether I went to the parking lot with Miss Mendez, whether I went down to the lobby and just bid her goodnight. I don't remember whether she was valet parked. I really don't recall, but there was a disbursement of all the parties.

Mr. ANDERSON. Did you have further occasion to see Mr. Borders on that weekend?

Mr. McCRARY. Yes, sir. I did.

Mr. ANDERSON. When was that?

Mr. McCRARY. Mr. Borders picked me up from the hotel the next morning to take me to the airport.

Mr. ANDERSON. And was Judge Hastings with you at that time?

Mr. McCRARY. Yes, sir.

Mr. ANDERSON. Who—did Mr. Borders drive you both to the airport?

Mr. McCRARY. Yes, sir.

Mr. ANDERSON. Who was dropped off first?

Mr. McCRARY. Judge Hastings was.

Mr. ANDERSON. Why was that?

Mr. McCRARY. Well——

Mr. ANDERSON. If you recall.

Mr. McCRARY. As I recall, we—as we did the circular drive around the airport, whatever airlines he was catching was before mine. I was catching Eastern back to Miami, which is, as I recall, down at the end of the terminal.

Mr. ANDERSON. Now, Mr. McCrary, had you expected Mr. Borders to arrive on the evening of Saturday, September 12th?

Mr. McCRARY. No, sir.

Mr. ANDERSON. In your—had you in your conversation—you said I believe that you had spoken with Miss Mendez to invite her to join you when you were in Washington?

Mr. McCRARY. Yes, sir.

Mr. ANDERSON. Had you discussed Bill Borders with her in the course of any of your conversations?

Mr. McCRARY. No, sir.

Mr. ANDERSON. Were—did Judge Hastings and Miss Mendez, were they friends to your knowledge?

Mr. McCRARY. I think—I think he knew her, and I'm—I'm almost sure that she knew him.

Mr. ANDERSON. From what period of time?

Mr. McCRARY. I can't say. I can't say that they were people who would call each other on the phone, but I think that she knew who he was, and if he didn't know her, I probably told him who she was. I have no independent recollection as to whether he knew her prior to that time.

Mr. ANDERSON. To the best of—there has been some testimony by Miss Mendez that she thought you were waiting on Bill Borders. Did you discuss Bill Borders with her at all?

Mr. MCCRARY. No, sir. I did not.

Mr. ANDERSON. Were you conscious at all that the group was waiting on Bill Borders?

Mr. MCCRARY. No, sir.

Mr. ANDERSON. Did you have any discussions with Judge Hastings to that effect?

Mr. MCCRARY. No, sir.

Mr. ANDERSON. Can you account for Miss Mendez's present recollection that you were waiting for Bill Borders?

Mr. MCCRARY. Mr. Anderson, I can't account for her recollection. I simply think she's wrong.

Mr. ANDERSON. Mr. McCrary, let me—you had known, I take it, by October 1, 1981—October 9, 1981, Mr. Borders for a considerable period of time?

Mr. MCCRARY. Yes, sir.

Mr. ANDERSON. And you had known him through your activities and his in the National Bar Association?

Mr. MCCRARY. Yes, sir.

Mr. ANDERSON. Prior to October 9, 1981, did you have an opinion as to his or were you aware of his professional reputation and his political reputation?

Mr. MCCRARY. Yes, sir.

Mr. ANDERSON. What was that reputation?

Mr. MCCRARY. One, his political reputation was—to use a mild word—awesome, meaning a very powerful person, and I guess in some lay terms very well connected politically both in some state governments and particularly in the Washington, DC area, and more particularly within the bar association.

I had considered Mr. Borders to be an upright truthful person, and a lawyer of some standing.

Mr. ANDERSON. And you had—had you remained in close contact with Judge Hastings since law school days.

Mr. MCCRARY. Yes, sir. I have.

Mr. ANDERSON. Had you observed Judge Hastings—well, first of all, had you observed Judge Hastings in terms of how—his desire to acquire and his need for money and financial matters?

Mr. MCCRARY. He's the world's worse businessman. He had no—money meant nothing to him. I mean, there are some great stories I could tell you, but I told him that to his face. It's not news to him. I told him he was a bad businessman as a lawyer like most lawyers are.

Mr. ANDERSON. But did he feel constrained by the lack of money in your view?

Mr. MCCRARY. No, sir.

Mr. ANDERSON. What did motivate Alcee Hastings to your—based upon your years of knowing him?

Mr. MCCRARY. To be a catalyst for change. To help the downtrodden, unpopular causes, people.

Mr. **Anderson**. As of October 9, 1981, were you familiar with Judge Hastings' reputation in the south Florida community as a judge?

Mr. **McCrary**. Yes, sir.

Mr. **Anderson**. What was that reputation?

Mr. **McCrary**. Fair, no nonsense, no favoritism.

Mr. **Anderson**. Were you familiar with his reputation for truthfulness and integrity?

Mr. **McCrary**. Yes, sir.

Mr. **Anderson**. What was that reputation?

Mr. **McCrary**. Truthful, absolutely truthful, truthful to the point that it could become a fault with him.

Mr. **Anderson**. And based on your own observations, did your opinion of Judge Hastings conform to his reputation?

Mr. **McCrary**. Yes, sir.

Mr. **Anderson**. Has your opinion of Judge Hastings changed in anyway since October 9, 1981?

Mr. **McCrary**. Not one *iota*.

Mr. **Anderson**. As you sit here today, you hold the same opinion of him?

Mr. **McCrary**. Yes, sir.

Mr. **Anderson**. Mr. Chairman, in the interest of cutting the Respondent's time budget, I will pass the witness now with the understanding that if matters are opened, I may on redirect come back.

The **Chairman**. Is there cross-examination of the witness?

Mr. **Conyers**. Yes, sir.

Good afternoon, Mr. McCrary.

Mr. **McCrary**. Afternoon, Congressman.

CROSS EXAMINATION

Mr. **Conyers**. For the record, we've been together on three occasions, is that right?

Mr. **McCrary**. I believe that's correct, sir.

Mr. **Conyers**. OK. Let's put it on the record.

Mr. **McCrary**. Sure. Want me to do it?

Mr. **Conyers**. You do it.

Mr. **McCrary**. I had the—Congressman Conyers and I were at the very sad occasion of the death of Judge Edward Bell, a very respected lawyer in Detroit. We attended the funeral at the same time. We were seated I believe somewhere near each other. Additionally, I observed Congressman Conyers in the Miami area I believe in January of this year when he was conducting hearings there. We did not speak. I attended the hearings. I stood at the back of the room. I might have nodded at the Congressman, but other than that, we did not speak, and on this afternoon, the Congressman and the lady from his staff interviewed me upstairs in the, I guess it's the conference room about my testimony here today.

Mr. **Conyers**. Thank you very much.

And you've also testified, Attorney McCrary, at the Investigating Commission and at Judge Hastings' trial.

Mr. **McCrary**. That's correct, sir.

Mr. CONYERS. And you've probably been interviewed more times than you care to recall by counsel and committee staff.

Mr. MCCRARY. If I had a dollar for each one, I'd be OK.

Mr. CONYERS. A few questions about Hemphill Pride. You testified that as of 1981 you'd known both William Borders and Judge Hastings for a while.

Mr. MCCRARY. Yes, sir.

Mr. CONYERS. And Judge Hastings was a fairly close friend at that time and still is.

Mr. MCCRARY. Yes, sir.

Mr. CONYERS. And you also knew Hemphill Pride in the same period of time?

Mr. MCCRARY. Yes, sir. I did.

Mr. CONYERS. You heard about Mr. Pride's various problems around that time, the incarceration, financial difficulty, suspension from the Carolina bar. Is that correct?

Mr. MCCRARY. Yes, sir.

Mr. CONYERS. You were never asked by Bill Borders to do anything to help with Mr. Pride's reinstatement, were you?

Mr. MCCRARY. No, sir.

Mr. CONYERS. You were never asked by Judge Hastings to do anything to help with Mr. Pride's reinstatement, were you?

Mr. MCCRARY. No, sir.

Mr. CONYERS. Neither Judge Hastings nor William Borders ever solicited money from you on behalf of Hemphill Pride, did they?

Mr. MCCRARY. Mr. Borders did not. Judge Hastings did. On an occasion Judge Hastings and I were talking, we were in some conversation, and he said to me, "Jesse, you know Hemp's having real problems," and this was during his incarceration, and he said that, "You know that he and Shirley have just had a baby, and she really needs help." And I knew Mrs. Pride even prior to their marriage when they were dating, and I did send her a check for $100.

Mr. CONYERS. Was that based on other activities going on or because of Judge Hastings or a combination of other people's activity?

Mr. MCCRARY. No. It was based on what Judge Hastings had just brought to my attention. Even though I knew that Hempie was in prison, it had not dawned on me to send his wife anything, but I did do it based on Judge Hastings had asked me, or just suggested, you know, he said, "We really need to do something for Hempie."

Mr. CONYERS. Well, in early 1981 Mr. Pride was out of jail. Where did you say you sent the check?

Mr. MCCRARY. I sent it to Mrs. Pride.

Mr. CONYERS. To Mrs. Pride.

Mr. MCCRARY. No, I didn't send it to him.

Mr. CONYERS. Was he out at that time?

Mr. MCCRARY. No, I don't believe he was out at the time that I sent the check, because I sent it directly to her.

Mr. CONYERS. All right. Let's just talk for a little bit about the meetings between Judge Hastings and William Borders in the summer of 1981.

Mr. MCCRARY. All right, sir.

Mr. CONYERS. Because there was the time that Judge Hastings and William Borders visited you at your house. Is that right?

Mr. McCrary. That's correct, sir.

Mr. Conyers. And they spent the afternoon there together?

Mr. McCrary. They spent a good portion of the afternoon at my house, yes, sir.

Mr. Conyers. You don't recall the date?

Mr. McCrary. I think—as we discussed the date, Congressman Conyers, I think your associate or your assistant brought to my attention that Judge Hastings had identified that date as July 10th. I don't independently recollect what date it was, but I do acknowledge the fact that they were at my house during the summer.

Mr. Conyers. Right. And they came together, they drove to your house together, and left together. Is that correct?

Mr. McCrary. That's correct, sir.

I believe, Congressman, just so the record is straight, at one time as I indicated to you today, I had testified that I didn't know, I thought they came in two cars, but upon some reflection I indicated to you, and I think that record will reflect, that I then did recall that they came in a single car.

Mr. Conyers. Right. OK. Now we move to the dinner at the Sheraton on September 12th. On the evening of September 12, 1981, when you had dinner with Mr. Borders and Judge Hastings at the Sheraton, Washington, DC, do you recall that you quote, "sat around for a long time and you ate dinner very late"?

Mr. McCrary. Yes, sir.

Mr. Conyers. And could someone have said if you recall that you were waiting for someone—not you, that someone was waiting for someone?

Mr. McCrary. Someone could have said that, Congressman.

Mr. Conyers. And think carefully, this may be the high point of my cross-examination. Do you recall that for some reason you were waiting, that everybody was waiting?

Mr. McCrary. There was no reason we were waiting. People were simply sitting around talking. There was no rush for dinner as I recall.

Mr. Conyers. OK. Now we go back to your testimony at the Eleventh Circuit Investigating Committee.

Mr. McCrary. Yes, sir.

Mr. Conyers. OK. At that time you were asked whether you recall that you were waiting for someone, and in response to that question, I want you to see if you remember if you said this.

Mr. McCrary. All right, sir.

Mr. Conyers. "We sat around for a long time. We ate dinner very late. Whether someone said we were waiting on someone, I don't recall," and then you went on to say, "I honestly don't recall what was said, but for some reason we were waiting and I don't know who we were waiting on and I can recall that now."

Wasn't that your testimony before the Investigating Committee?

Mr. McCrary. Mr. Conyers, if it's in that record, that was my testimony.

Mr. Conyers. OK. It's in that record.

Mr. McCrary. Yes, sir.

Mr. Conyers. Would you like to see it?

Mr. McCrary. I've seen it, Congressman.

Mr. Conyers. OK. You agreed—you agree that's what you said?

Mr. McCRARY. I agree that's what I said.

Mr. CONYERS. OK. Then let me go back and ask you again. Do you recall that for some reason you were waiting?

Mr. McCRARY. Congressman, I do not recall a reason we were waiting. We were sitting there talking and doing nothing.

Mr. CONYERS. Right. "But for some reason we were waiting"—you don't know the reason, but you were waiting, right?

Mr. McCRARY. Congressman, we were sitting there talking. There was no rush to get to dinner. Nobody jumped up and said, "I'm hungry." I mean, we were sitting around, and that's what I recollect, Congressman.

Mr. CONYERS. "But for some reason we were waiting"——

Mr. ANDERSON. Mr. Chairman, that's been asked and answered.

Mr. CONYERS. Well, wait a minute. I don't think that has been responded to.

Do you agree with that?

Mr. McCRARY. Congressman——

Mr. CONYERS. Just yes or no?

Mr. ANDERSON. Mr. Chairman, please.

The **CHAIRMAN.** I think the witness can certainly state whether he agrees with that, and then explain his answer again if he'd like.

Mr. McCRARY. Congressman, if you're asking me whether we were waiting on someone, I was not waiting on anyone and I was not under the impression that someone was waiting on someone. When I say we were waiting, it was a general term that we were sitting around waiting. It could have been for people to finish a drink. I honestly don't recall.

Mr. CONYERS. Well, did you recall at the Investigating Committee when you gave the testimony I just read to you?

Mr. McCRARY. Congressman, let me respectfully—at the Investigating Committee, if you had testified with six Federal judges there and John Doar, they can ask you questions 15,000 ways, notwithstanding how bright I think I am, there is no way of getting around them if they want a particular answer.

My answer to them was truthful at that time, Mr. Chairman. My answer to you, what I recollect now is truthful. It is the same thing I testified to at the trial. I been interviewed by the FBI, your staff, Mr. Weingarten, Mr. Murphy, on these same questions.

Mr. CONYERS. Thank you. Did you feel you were intimidated or influenced at the Investigating Committee?

Mr. McCRARY. Mr. Conyers, with five Federal judges, you would be intimidated.

Mr. CONYERS. Well, but were you?

Mr. McCRARY. I suppose I was intimidated by all of this awesome power that sat there. Intimidated, if you mean afraid, no, I was not.

Mr. CONYERS. I didn't think so.

Mr. McCRARY. But even this is an intimidating kind of experience. Standing before the United States Supreme Court is intimidating, and all human beings are intimidated when they look at the awesome power of other human beings.

Mr. CONYERS. But then when you said, "but for some reason we were waiting," was that a question that John Doar and these intimidating judges were trying to illicit from you or was that you telling them to the best of your recollection what happened?

Mr. **McCrary**. To the best of my recollection, I told them what happened, that we were waiting. For what, I do not recall, Congressman.

Mr. **Conyers**. OK. And when you finally went into the dining room, the hotel dining room, it was almost empty, wasn't it?

Mr. **McCrary**. Yes, sir.

Mr. **Conyers**. Now, that evening September 12th, you were not with Judge Hastings and Mr. Borders every moment that they were together. Is that accurate?

Mr. **McCrary**. If I can explain, without answering you yes or no?

Mr. **Conyers**. Please.

Mr. **McCrary**. I don't know whether they were together. I know that—I know the time that I was with them. I cannot speak for the time that they were out of my sight.

Mr. **Conyers**. You don't know if they were or were not together?

Mr. **McCrary**. Right you are. I do not know that.

Mr. **Conyers**. That's fine.

And after the dinner, the parties disbursed, and you went your way, and others went their way?

Mr. **McCrary**. Yes, sir.

Mr. **Conyers**. And so you don't know whether Judge Hastings and Mr. Borders spent time alone together after the meal or not?

Mr. **McCrary**. I do not know, sir.

Mr. **Conyers**. Fine. Thank you very much.

Mr. **McCrary**. Thank you, sir.

The **Chairman**. Is there additional direct examination?

REDIRECT EXAMINATION

Mr. **Anderson**. Mr. McCrary, have you ever had the occasion to be before those nine intimidating Federal judges in the Supreme Court?

Mr. **McCrary**. Yes, sir. I've had the distinction of arguing before the United States Supreme Court.

Mr. **Anderson**. And was that a public session or done behind closed doors?

Mr. **McCrary**. It was a public session, sir.

Mr. **Anderson**. When you appeared before the five judges who were members of the Investigating Committee, was that in public session or was that done behind closed doors?

Mr. **McCrary**. Closed doors, sir.

Mr. **Anderson**. On how many occasions were you called?

Mr. **McCrary**. I believe I was called on two different occasions.

Mr. **Anderson**. And did you perceive the examiners there as more friendly or less friendly than Representative Conyers?

Mr. **McCrary**. Did I perceive them more friendly——

Mr. **Anderson**. As questioners, did you think they were more or less——

Mr. **McCrary**. They were a lot less friendly than Congressman Conyers.

Mr. **Anderson**. Did they—was it your impression that they were trying to extract concessions from you?

Mr. McCrary. I don't want to characterize it that way, Mr. Anderson.

Mr. Anderson. Please, characterize it if you would for the committee.

Mr. McCrary. I think they were asking hard questions seeking to get answers that they wanted. That's how I characterize it, and I don't say that in a negative fashion and I do not say it in terms of anybody had a sinister motive, but I think they wanted certain answers and they were trying to get them in terms of questions being asked ten different ways, but the subject matter and the essence of the question remaining the same.

Mr. Anderson. Now, you indicated—had you been interviewed prior to Judge Hastings' trial by the FBI?

Mr. McCrary. Yes, sir, I did.

Mr. Anderson. And you recall and did testify and were cross-examined at Judge Hastings' trial?

Mr. McCrary. Yes, sir, I was.

Mr. Anderson. And you have been subsequently interviewed. I ask you again, Mr. McCrary, did you expect or have any knowledge from any source that William Borders was going to arrive at the hotel room on September 12, 1981?

Mr. McCrary. I did not expect him. I had no knowledge or no indication that Mr. Borders would show up there.

Mr. Anderson. To the best of your present recollection today, when there was a knock on the door and Judge Hastings opened the door, what did Judge Hastings say?

Mr. McCrary. To the best of my recollection he said something like, "Look who's here," or "What are you doing here?"

Mr. Anderson. Was it your impression then, as you recall it today, that Judge Hastings was surprised by Bill Borders' arrival?

Mr. McCrary. Yes, sir.

Mr. Anderson. Over the course of the balance of the evening and the following morning when you were together, did any—was anything caused—was anything said to change that impression that Judge Hastings had been surprised when Bill Borders arrived?

Mr. McCrary. No, sir.

Mr. Anderson. I have nothing further.

The Chairman. Is there additional cross-examination, Representative Conyers?

Mr. Conyers. No.

The Chairman. Are there questions from the committee? Senator Specter.

EXAMINATION BY THE COMMITTEE

The Vice Chairman. Yes. Thank you very much, Mr. Chairman. Mr. McCrary, you've testified extensively about the issue as to whether or not Mr. Borders was expected at the dinner in the Sheraton on September 12th. Do you happen to know whether there were reservations or place settings for more than the five people who were in attendance at that dinner?

Mr. McCrary. Senator, my recollection is that we all went down to dinner at the same time, and that there were place settings for each person.

The VICE CHAIRMAN. So there had not been a reservation made as to anyone, or do you recall?

Mr. MCCRARY. Senator, I really don't recall. I do not believe a reservation had been made.

The VICE CHAIRMAN. At any rate, there were only five place settings at the table where the five of you were sitting?

Mr. MCCRARY. No, sir. I think I testified, Senator, that six of us went down to dinner. I don't recall whether there were five place settings, but I seem to recall that there were six there, because as I—and I don't know what the procedure is. I don't know whether they brought a second table or not, I mean a sixth chair or not, because everybody went down at the same time, but we were seated at a table that would accommodate six people.

The VICE CHAIRMAN. And you do not know whether or not a reservation was made in advance?

Mr. MCCRARY. Oh, no, sir. I do not.

The VICE CHAIRMAN. Mr. McCrary, on September 13th, as I understand it, Mr. Borders drove you and Judge Hastings to the airport.

Mr. MCCRARY. Yes, sir.

The VICE CHAIRMAN. Now, you're familiar with the fact that there was an incident at the Fontainebleau Hotel a few days after that on September 18th where allegedly, or there's some controversy as to whether Mr. Borders was to join Judge Hastings for dinner.

Mr. MCCRARY. Yes.

The VICE CHAIRMAN. Now, did you and Judge Hastings exit at the same time when Mr. Borders drove you to the airport on September 13th?

Mr. MCCRARY. From the car?

The VICE CHAIRMAN. From the car?

Mr. MCCRARY. No, sir. We did not.

The VICE CHAIRMAN. Who got out first?

Mr. MCCRARY. Senator, I believe that Judge Hastings got out first, and——

The VICE CHAIRMAN. All right.

Mr. MCCRARY. If I could just——

The VICE CHAIRMAN. Go ahead.

Mr. MCCRARY. I got out at Eastern, Senator, and as I recall the configuration, Eastern is at the end when you're coming into the airport, and Judge Hastings got out at another location, but—Senator, to be truthful with you, I don't know who got out first. I think Judge Hastings got out first.

The VICE CHAIRMAN. Well, if he did get out first or in any event, did Judge Hastings say anything to Mr. Borders or Mr. Borders say anything to Judge Hastings about, "See you next week at the Fontainebleau on the 18th," or anything to that effect?

Mr. MCCRARY. Not to my knowledge, Senator.

The VICE CHAIRMAN. Was any comment made between Mr. Borders and Judge Hastings that Mr. Borders intended to go to the Leonard-Hearns fight the following week?

Mr. MCCRARY. I don't recall that at all, Senator.

The VICE CHAIRMAN. Mr. McCrary, do you have any knowledge about whether Judge Hastings was asked to do anything for Mr.

Hemphill Pride or whether Judge Hastings did anything for Mr. Hemphill Pride on the issue of Mr. Pride's readmission to the bar back in the period the Fall of 1981?

Mr. McCRARY. Senator, I don't have any knowledge that Mr.—Judge Hastings was asked to do anything for Mr. Pride. The only thing I can testify to is that the judge had mentioned to me in a conversation about the plight of Mr. Pride's wife, and that we ought to try to do something. And when he said, "we," I think he was talking primarily about lawyers.

The VICE CHAIRMAN. Yes. Well, that was sometime before, correct?

Mr. McCRARY. Other than that, I had heard on—and I cannot pinpoint when it was, Senator, the judge mentioning that he was trying to help Hempie. I had never heard that someone had asked him to, if I make sense.

The VICE CHAIRMAN. Well, when did you hear the judge, Judge Hastings say that he was trying to help Mr. Pride?

Mr. McCRARY. Senator, I cannot recall when it was.

The VICE CHAIRMAN. Was there anything in that conversation or any other conversation about Judge Hastings writing letters on behalf of Mr. Pride?

Mr. McCRARY. I don't—what I do recall is that on an occasion, and I don't know when it was—I seem to remember Judge Hastings saying to me that he had written or was going to write a Supreme Court Justice on Pride's behalf. I don't know when that was. I really cannot pinpoint the time. I do not know whether he did write that Justice or did not write that Justice.

The VICE CHAIRMAN. Well, can you fix that conversation in anyway with any specificity, for example, where the conversation was held?

Mr. McCRARY. Senator, I really can't.

The VICE CHAIRMAN. Or what the circumstances were? What I'm driving at, one lawyer to another, trying to look for something concrete that you can tie it to, that you can really be sure about it.

Mr. McCRARY. Senator, I'm extremely sorry. I really cannot.

The VICE CHAIRMAN. And you can't fix any time span or any approximate time?

Mr. McCRARY. The only time span that I could fix was that it was after Mr. Pride was out of prison, and whenever—and I'm making an assumption for the moment, if you please, that it was when Pride began his ernest attempts to get readmission to the bar.

The VICE CHAIRMAN. And as best you can recollect, if you can, what did Judge Hastings say he intended to do for Mr. Pride?

Mr. McCRARY. The only thing I heard is what I've testified to, that he had made mention that he was going to write a Supreme Court Justice or that he had written a Supreme Court Justice on Pride's behalf.

The VICE CHAIRMAN. Mr. McCrary, I have just one other question, and I ask this question only so that the record will be complete, and I do not raise any inference at all in the question which I ask you, but it has been called to my attention that June 3, 1981, was the day the indictment was handed down against Mr. Santos Trafficante, and according to information provided to me, you called Mr. Borders three times on that day, and Mr. Borders called you once on that day. Now, that's obviously a needle in a haystack, but do you have any conceivable recollection of four telephone calls between you and Mr. Borders on the same day?

Mr. McCrary. I have no conceivable notion why I called or why he returned the call. I believe, Senator, that Mr. Doar showed me copies of my telephone tolls, and Borders on some streaks may have called me three or four times. I have no idea why I called him or about what. It could have been—

The Vice Chairman. So it was not an unusual occurrence for Mr. Borders to call you in streaks, as you say, some three times a day?

Mr. McCrary. Oh, no, it wasn't unusual, Senator. When I say "unusual," for example, during the time that they were getting ready to have the National Bar Association and he was the president, I mean, there was a call every other day about, "I want you to do this. I want you to do that." And one time there was just a tremendous amount of calls, and I remember that in July of that year I had been selected to do the keynoter speech at the first general assembly, the plenary session of the National Bar Association, and there were numerous calls from Borders regarding bar activities. I—I didn't find—I don't find that unusual, Senator, during that time.

The Vice Chairman. OK. Thank you very much.

The Chairman. Senator Leahy.

Senator Leahy. If I fully understand this meeting at the hotel, that was the last time—am I correct that was the last time you saw Judge Hastings and Mr. Borders together at the same place?

Mr. McCrary. Yes, sir. Yes, sir.

Senator Leahy. Now, you were in the room with Judge Hastings first. Is that correct?

Mr. McCrary. You mean during the day?

Senator Leahy. Who did you—maybe I ought to put it this way. Who did you see first that day, Judge Hastings or Mr. Borders?

Mr. McCrary. Judge Hastings.

Senator Leahy. And how long had you been with Judge Hastings before Mr. Borders showed up?

Mr. McCrary. Senator, to give you a round——

Senator Leahy. As near as you can recall.

Mr. McCrary. As near as I can recall, I saw Judge Hastings, I got in Washington I guess about 10:30 or 11:00, saw him about an hour later or an hour-and-a-half later, and I was with him most of the day one way or the other when I was not with my daughter, who was, by the way, right there at the hotel with me.

Senator Leahy. Now, let's go to the hotel at the place where Mr. Borders eventually showed up.

Mr. McCrary. Yes, sir.

Senator Leahy. How long were you and Judge Hastings at that location? Let me make sure I fully understand this. Judge—you remember Mr. Borders showed up, and according to you said something about, "Look who's here," or, "What are you doing here?" That's the spot I'm talking about.

Mr. McCrary. Oh, all right, sir.

Senator LEAHY. How long were you and Judge Hastings at that spot prior to Mr. Borders showing up?

Mr. MCCRARY. We had been there I know from the time that the ladies arrived, the two ladies, and I don't recall whether one came by herself and another came, or they both came together, and when Miss Mendez was there. So for that period of time, Judge Hastings and I had been together two or three hours.

The CHAIRMAN. Let me just interrupt for a moment. I believe the House managers were trying to signal me.

Mr. CONYERS. Yes. Mr. Chairman, we're into the second bells of a recorded vote on the House side I'm sorry to say.

The CHAIRMAN. We will recess shortly while the House managers vote.

Mr. CONYERS. We'll return immediately.

The CHAIRMAN. Thank you.

[Short recess.]

The CHAIRMAN. The committee will come to order.

Senator Leahy was asking questions of Mr. McCrary. If you would continue with that, please.

Senator LEAHY. I understand we were at the point when Mr. Borders walked in the room.

Now, you testified that he said something to the effect of, "Look who's here," or "What are you doing here?"

Mr. MCCRARY. Something to that effect, Senator, yes, sir.

Senator LEAHY. By your words there, there could be somewhat different attitudes like, sort of like, "Look who's here," or "What are you doing here?" Do you get what I mean?

Mr. MCCRARY. Yes, sir.

Senator LEAHY. Well, how did it sound to you? Did it sound like just a greeting or was he—let me ask you this specifically. Did Mr. Borders seem angry that Judge Hastings was there?

Mr. MCCRARY. Did he seem angry? No, sir.

Senator LEAHY. I mean—I'm sorry. I said it the other way.

Did Judge Hastings seem angry that Mr. Borders was there?

Mr. MCCRARY. No, sir.

Senator LEAHY. Did he seem surprised that Mr. Borders was there?

Mr. MCCRARY. Yes. To me he did, sir.

Senator LEAHY. Did he seem surprised and happy?

Mr. MCCRARY. Senator, he just seemed surprised. I mean, it wasn't——

Senator LEAHY. Now, tell me about some of the—then how long did they stay there talking together while you were there after Mr. Borders arrived, Judge Hastings and Mr. Borders?

Mr. MCCRARY. Everybody was in the same room, Senator. It was a small room, but the same room. If you're asking me if I saw them go off to the side, no, sir.

Senator LEAHY. That's not what I'm asking. I'm asking you how long were they there together while you were there?

Mr. MCCRARY. We must have been there 30, 45 minutes, maybe 30 minutes, Senator.

Senator LEAHY. Do you remember any of the subjects that were discussed?

Mr. MCCRARY. No, sir.

Senator **Leahy**. Anything about sports like boxing matches?

Mr. **McCrary**. Not that I recall, Senator.

Senator **Leahy**. Anything about politics?

Mr. **McCrary**. Senator, there might have been politics if you know Bill Borders. I mean, that was a constant conversation with him. I don't independently recall it, but I can't ever remember having a conversation with Bill Borders when politics did not come up. That's what I'm saying really.

Senator **Leahy**. Do you recall any discussions about pending cases?

Mr. **McCrary**. No, sir.

Senator **Leahy**. Do you recall any discussions about the weather?

Mr. **McCrary**. No, sir.

Senator **Leahy**. About family?

Mr. **McCrary**. No, sir. Senator, to be honest with you, I don't even recall what the conversations were with general conversation.

Senator **Leahy**. Do you know whether Judge Hastings is a sports fan, baseball, basketball?

Mr. **McCrary**. Senator, I'd have to say that he is a sports fan. I don't know if he is an avid sports fan.

Senator **Leahy**. How about boxing? Is he a fan of boxing?

Mr. **McCrary**. I don't know, sir.

Senator **Leahy**. Did you ever know of him going to boxing matches or talking about going to boxing matches?

Mr. **McCrary**. Senator, I remember Judge Hastings going to one boxing match, and I can remember this sort of vividly as most people do. When I worked for him in Fort Lauderdale, we went to see the who was then Cassius Clay-Sonny Liston fight.

Senator **Leahy**. That one would be a good one to remember, wouldn't it?

Mr. **McCrary**. That's why I say most people remember it, the punch that didn't land.

Senator **Leahy**. I understand. But—even I remember that, and I wasn't there.

Did you ever remember him going to another boxing match?

Mr. **McCrary**. No, sir. I do not, sir.

Senator **Leahy**. Thank you. Thank you, Mr. Chairman.

The **Chairman**. Are there other questions from the committee? Senator Durenberger.

Senator **Durenberger**. Mr. Chairman, thank you.

Mr. McCrary——

Mr. **McCrary**. Yes, sir.

Senator **Durenberger**. You indicated that you've known Bill Borders since, I guess it was 1965 when you met him, when you went to law school?

Mr. **McCrary**. No, sir.

Senator **Durenberger**. Oh, I'm sorry.

Mr. **McCrary**. I knew Mr. Borders since about 1970 or 1971. I never went to law school with Mr. Borders.

Senator **Durenberger**. Very good. So you've known him since 1970, 1971, and you've known him both through the National Bar Association and in a variety of other ways, I take it?

Mr. **McCrary**. Yes, sir.

Senator Durenberger. And it apparently is not unusual for you to get frequent phone calls from Bill Borders?

Mr. McCrary. Not—absolutely not, sir.

Senator Durenberger. I think you referred to him as "awesome." Obviously——

Mr. McCrary. Senator, when I said "awesome," I meant in terms of his—his power and connection within the bar association, and I say "awesome," in a good sense, meaning a very powerful person, a very influential person. I didn't mean that in a negative sense. I meant it in quite a positive sense.

Senator Durenberger. Yes. I assumed that you meant it in a positive sense.

Do you—you had, with regard to Judge Hastings, you did, also a very good friend of yours, a long personal relationship, you had an opinion about Judge Hastings' attitude towards wealth and income and property, and so forth. Do you have a similar opinion with regard to Bill Borders?

Mr. McCrary. My opinion is not similar as it relates to Bill Borders.

Senator Durenberger. Would you describe your opinion of Bill Borders as it relates to wealth and income and possessions, and so forth?

Mr. McCrary. Senator, what I give you is an opinion and it's a perception. I don't have any independent knowledge.

Senator Durenberger. I understand that.

Mr. McCrary. I viewed Mr. Borders as a person who wanted to be very powerful, liked running in circles with very powerful people. I viewed him as a man——

Senator Durenberger. Do you mean running in powerful people circles or running in circles with powerful people, either of which is possible apparently.

Mr. McCrary. Senator, what I really meant is——

Senator Durenberger. Especially in politics.

Mr. McCrary [continuing]. Bill Borders liked to rub shoulders with powerful people.

Senator Durenberger. All right. Thank you.

Mr. McCrary. As opposed to Judge Hastings, I did not view Mr. Borders as a person who was indifferent to money. I—and I don't have any independent knowledge, but just from my perception, he was much more attuned to money than Hastings was. I did not view Mr. Borders as a, for the lack of a better word, a crusader in social kinds of causes or as I've classified Judge Hastings, a catalyst for change in many instances.

Senator Durenberger. Do you have an opinion of the financial situation that Mr. Borders found himself in on around 1981?

Mr. McCrary. I have no knowledge, Senator.

Senator Durenberger. You have no independent knowledge of that?

Mr. McCrary. No, sir.

Senator Durenberger. Thank you.

The Chairman. Senator Rudman, did you have questions?

Senator Rudman. I did.

Mr. McCrary, I refer to this, this night in September as the night that somebody came to dinner, but nobody knows who invited him. You didn't invite him.

Mr. McCrary. No, sir.

Senator Rudman. Have you an explanation of how he showed up there?

Mr. McCrary. I have no explanation, Senator.

Senator Rudman. None?

Mr. McCrary. No, sir.

Senator Rudman. You just don't know?

Mr. McCrary. I don't know, Senator.

Senator Rudman. It's unlikely that he combed the City of Washington to find a hotel that you just might be in? I mean, he didn't know that you were coming to Washington, did he in particular?

Mr. McCrary. Senator, I don't know, and let me be very honest with you, I don't know if at sometime prior to that I had mentioned to Borders that I was coming to Washington. I really don't know. But I don't—I don't have any recollection of my saying to him, "I am going to be in the Sheraton Hotel."

Senator Rudman. Well, I guess the problem we're going to have, Mr. McCrary, and I believe your testimony, you're a very forthright witness, the other witnesses so far who have been at that event did not invite him, Judge Hastings will testify. I don't know what he will say, but I would have to assume that he's going to testify that he didn't invite him, because the testimony has been thus far that he was, "surprised," I believe his counsel referred to that in his opening argument. So it's going to be rather interesting for us to determine, if that's important, who invited him to dinner. But you are sure that you didn't?

Mr. McCrary. Senator, you can rest assured I didn't invite him.

Senator Rudman. Were you personally and socially friendly with Judge Hastings over the last 20 years?

Mr. McCrary. Yes, sir. Since 1962.

Senator Rudman. Twenty-seven years?

Mr. McCrary. Yes, sir.

Senator Rudman. And this was when you worked for him and then when he went on the bench, and you've continued a social relationship?

Mr. McCrary. Yes, sir. You know, I proudly say to everybody I was with him the night his first child was born, his first son.

Senator Rudman. Have you ever appeared before Judge Hastings in Federal court?

Mr. McCrary. Yes, sir. I appeared before Judge Hastings on two occasions. On one occasion, I appeared with, who is probably the dean of Florida lawyers, Marion Sibley, with whom I did Mr. Sibley's constitutional law work in a number of cases. Whenever Mr. Sibley had questions of constitutional law, he would associate me with him, and on this particular case we were representing the Seminole Indian tribe on some constitutional issues. There was a preliminary injunction scheduled. It was not Judge Hastings' case. When we got to the hearing room, the case had been switched to Judge Hastings. That was one occasion I appeared before him.

The other occasion I appeared before Judge Hastings, Judge Hastings made a great mistake in the law, because I lost a $40,000 fee on his ruling.

Senator **Rudman**. I would assume you would think that was a great mistake, Mr. McCrary.

Mr. **McCrary**. Yes, sir. He thoroughly misunderstood the law. On that occasion, this was shortly after Judge Hastings went to the bench, the case had been assigned to another judge. I believe the practice in the Southern District of Florida is when a new judge is added, a few cases from each judge go to the new judge to make up his calendar, and that case was assigned to him. We eventually settled the case, but that was of little help to me at that point.

Senator **Rudman**. Did it ever come up in either of those two instances, even though Judge Hastings was not the scheduled judge, that due to your prior employment relationship in front of Judge Hastings and your current social relationship with Judge Hastings that either he or you would suggest recusal in that case?

Mr. **McCrary**. It did not, sir. I do recall that someone wrote a letter to the Judiciary—Judicial Council or Judicial Conference, the panel that was in Atlanta, saying that I had appeared before Judge Hastings and that the hearing had been unfair. But I can assure you that when Judge Hastings walked out, I was as surprised as anybody else, because it was not his case, and it was the only time we appeared before him in that case. That case subsequently went on to be tried before Judge Stanley Marcus, and I tried it.

Senator **Rudman**. Well, let me ask you, Mr. McCrary, because you're a witness with an extraordinary background. I have read your resume, and it is a resume for anyone to be proud of, and you've held many many positions. I would say that you probably of all the witnesses that we've had thus far, probably including some of the judges we've had, are as sensitive as anyone to all the questions of appearance and propriety, and this whole case goes to credibility of people. We're going to have to weigh everything. So I'm going to ask you maybe a question which I'd like you to think about.

Do you think in light of the past employment relationship that you had in front of Judge Hastings that—and the social relationship, that you should have disclosed that to opposing counsel when you appeared in court that day, or did opposing counsel know of that relationship?

Mr. **McCrary**. It is my understanding that opposing counsel knew of that relationship. It is my understanding of the law, Senator, that if there is enough time separating a relationship of that kind—and I believe in the Southern District of Florida it may be something like three or four years—where there is a separation of the parties, and even with partnerships, where a partner, one partner becomes a judge, that if there is no showing of a monetary gain, that is, the partner who is representing the party has severed all relationships with the sitting judge, that you can appear.

Senator **Rudman**. Well, I think that's an accurate statement of the law in most jurisdictions, but there is no rule on the matter of personal relationships, and I wonder if you would feel uncomfortable appearing before Judge Hastings, because you do have a strong personal relationship with Judge Hastings and have had for some time, friendship.

Mr. McCrary. Senator, let me put it this way, respectfully: In terms of those people who are black judges in Florida, I probably would be out of practice, because I know every one of them. I mean, the black bar is such a small one, if I'm going to be excluded from appearing before a black judge that I know, I'd never appear before one, I could never do it, because there is not a black judge in Florida that I do not know or I have not been at least, if not instrumental, encouraged the then Governor, the present Governor to appoint that person, if I felt within myself that that person had the academic standards, the moral integrity and judicial temperament to hold that office.

I would point out, Senator, that I have opposed some blacks who sought judgeships, too.

Senator Rudman. Oh, I have no doubt and I'm not challenging your integrity or the judge's integrity. I'm just trying to set up what the practice was, because we're trying to make some assessments here, and I would just ask this final question on this subject. Is your relationship or has your relationship been of a social nature with these other black judges that you described as longstanding and as involved as it has been with Judge Hastings?

Mr. McCrary. In terms of years, probably not, Senator.

Senator Rudman. Now, the last question I have for you, did you visit Judge Hastings in his chambers from time to time when you were in the Federal courthouse, since he was a friend?

Mr. McCrary. Yes, sir, I have.

Senator Rudman. Did you know his law clerks?

Mr. McCrary. I knew Alan Ehrlich, I knew—there's one gentleman who practices in mid-Florida now whose name I don't recall—I knew them by face. I can only name two that I can—he had one named Barbara, a lady whose name was Barbara, I don't recall her last name right now, an Alan Ehrlich, who I knew as his chief law clerk at one time.

Senator Rudman. I will be specific, rather than put you through a memory exercise, which is difficult. Did you happen to know, by any chance, a law clerk who served a brief stint with Judge Hastings back in the time frame I guess of 1980–81, a man named—with an unusual name of Charlester Williams?

Mr. McCrary. Is he a black gentleman?

Senator Rudman. Yes.

Mr. McCrary. I do recall him, sir——

Senator Rudman. Did you know him?

Mr. McCrary [continuing]. From Pennsylvania, I believe.

Senator Rudman. Did you know him?

Mr. McCrary. I only knew him in passing, Senator.

Senator Rudman. Do you happen to know if he had any friendship through bar associations of William Borders?

Mr. McCrary. I have no knowledge at all, sir.

Senator Rudman. Do you know where he is now?

Mr. McCrary. No, sir, I do not.

Senator Rudman. All right. Thank you very much.

Mr. McCrary. Yes, sir.

The **Chairman**. Are there other questions? Senator Pryor, did you have questions?

Senator **Pryor**. Yes.

Mr. McCrary, when you met Mr. Dredge in preparation or even after the hearing on the bond for Mr. Dredge, in May, did you and Mr. Dredge, before or after the bond hearing, discuss Mr. Borders?

Mr. **McCrary**. Senator, I believe that—what I can recall is he informed me that he was going to be represented in the Baltimore area, either by Borders or Pettit, and I don't—and he might have said both of them, I don't recall, but we did not discuss Mr. Borders in terms of anything beyond that, his being a lawyer or associated with Mr. Dredge's case.

Senator **Pryor**. How long were you with Mr. Dredge that day?

Mr. **McCrary**. Senator, approximately—I arrived at the courthouse I think about 8 o'clock, I got in to see him, because you have to go through the marshal, about 8:15, I think I must have sat with him for about 30 minutes, getting the facts from him, what had happened, and then the hearing started at 9 o'clock.

All-told, I might have been with him 45 minutes, albeit we were both in the courtroom at the same time, the hearing was longer than 45 minutes, but the marshal has people who are incarcerated in one section and counsel for the parties sit in another section.

Senator **Pryor**. So, when Mr. Dredge was freed on bond, after posting sufficient bond required by law, then did you still have a visitation period with Mr. Dredge after this, or did both of you go your respective ways?

Mr. **McCrary**. He then came back to my office on two or three occasions. As I indicated about getting his automobile that had been seized by DEA, he had received a letter from DEA stating that if he wanted to get the automobile, he was going to have to petition to get it, but the Federal Government has seized that automobile.

Senator **Pryor**. All right. How long was your continuing relationship with Mr. Dredge? How long, for example, did it take to get his automobile and other properties back?

Mr. **McCrary**. I did not get them back, sir. I filed a petition with DEA to get the automobile back. At some time, maybe two months or so passed before DEA ruled that they were seizing the automobile because the owner of the automobile had been involved in criminal activity with the automobile. So, I guess between the time I filed the remission, I probably saw him on two or three other occasions. As a matter of fact, I can remember, because after he gave me the letter, he gave me information about the lienholder of the automobile and that was a bank in Tennessee. I then made a call to the bank in Tennessee who put me in touch with their lawyer who also filed a pleading in the matter, saying that they were a lienholder.

Senator **Pryor**. So, it took some number of weeks that you had at least a relationship, a legal relationship representing your client on that matter with Mr. Dredge?

Mr. **McCrary**. Yes, sir.

Senator **Pryor**. During those subsequent visits with Mr. Dredge, did you discuss William A. Borders?

Mr. McCRARY. No, sir, not in any extent, other than Borders was representing him or Pettit was representing him. I probably discussed Pettit, because he had put me in touch with Pettit.

Senator PRYOR. All right. Now, did Mr. Dredge ever ask you about a man named Judge Alcee Hastings?

Mr. McCRARY. On one occasion. Mr. Dredge was in my office and, as he was leaving, he said do you know this Judge Hastings. I said, "Sure, I know Judge Hastings." "What do you think of him?" I said, "A fine fellow," and he left.

Senator PRYOR. Why did Mr. Dredge ask you about Judge Hastings?

Mr. McCRARY. I don't know, but let me explain to you this: I had explained to Mr. Dredge that there were two ways to get your automobile: One was administratively going through DEA, and the other was through a United States District Court, and I said I choose to do it administratively, because I think it is much faster administratively, rather than going through the courts, given what the calendar is in the southern District of Florida. I really—as an afterthought, Senator. At the time I didn't think that, I gave no credence to what he was saying, but as an after-thought, with all these things, it appeared to me now, and after all this stuff happened, that Mr. Dredge was seeking to find whether somebody knew Judge Hastings.

Senator PRYOR. He did not pursue that line of questioning?

Mr. McCRARY. No, sir, he did not.

Senator PRYOR. Thank you, Mr. Chairman. Thank you, Mr. McCrary.

The CHAIRMAN. Thank you.

Are there other questions? Senator Bond?

Senator BOND. Mr. McCrary, to go back to the question that Senator Rudman raised about the man that came to dinner, there was surprise expressed by Judge Hastings when he got there.

Mr. McCRARY. Yes, sir.

Senator BOND. You did not make any inquiry of either Judge Hastings or of Mr. Borders why he came there that night?

Mr. McCRARY. No, sir, I did not.

Senator BOND. There was no discussion of it?

Mr. McCRARY. I don't recall any discussion. I know I didn't make any discussion of it at all, sir.

Senator BOND. Had there been any discussion by Mr. Borders of his plans to go to the fight the next week, during the course of the evening was that mentioned?

Mr. McCRARY. Senator, if there was some mention of a fight, I didn't hear it, let me say that.

Senator BOND. Thank you, Mr. Chairman.

The CHAIRMAN. Are there other questions? Senator Lieberman?

Senator LIEBERMAN. Mr. McCrary, did you support Judge Hastings' appointment to the Federal bench in 1979?

Mr. McCRARY. That's a good question, Senator. Let me tell you why it's a good one.

Senator LIEBERMAN. A good answer?

Mr. McCRARY. Yes, sir, I have a good one. I supported Judge Hastings' appointment in concept. Understand, the State of Florida then had a judicial committee to send names to the Senators. I was one of those 10 names.

Senator LIEBERMAN. You were one of the other names submitted for a judgeship?

Mr. MCCRARY. I was one of the other names submitted, so I supported him in concept——

Senator LIEBERMAN. Well, I would say that was a——

Mr. MCCRARY [continuing]. But I had a much better candidate. [Laughter.]

Senator LIEBERMAN. All right. That was a test of your friendship, I would say. OK. So, if I understand correctly, then, did it reach a point where his name went forward and it was clear that you were not going to be nominated, where you became actively involved in supporting his nomination?

Mr. MCCRARY. Senator, let me say it this way—the other was said in humor, but it wasn't really humor—as best I recall, our Senator then was Senator Stone, who was the senior Senator——

Senator LIEBERMAN. Right.

Mr. MCCRARY [continuing]. And Florida had established this commission, and I believe there was, I believe, some 225 applicants and they were pared down to roughly, I think—pared down to 120 people for five vacancies or five newly created judgeships. I'd probably say that I went through that ordeal and was one of those 20. It was my thought at the time—and I think, since south Florida had not had a black Federal judge, the State of Florida had not had one, that it was important for even those of us who were competitors not to kill off each other, you know, don't cut off your finger to spite your hand.

Senator LIEBERMAN. Right.

Mr. MCCRARY. I think that at the time Judge Hastings probably had the upper hand over me and another gentleman, Judge Eddie Rogers. He was certainly a lot more politically active, and at one point I just sort of resigned myself to saying, well, if he's going to get it, you know, I'm just going to go back and do what I do best and that is practice law.

But when it became clear to me that he was going to get it, I certainly did wholeheartedly support him, notwithstanding this better candidate who was standing in the wings.

Senator LIEBERMAN. Did you solicit letters of endorsement for his nomination, for instance? Did you write a letter yourself?

Mr. MCCRARY. Senator, I don't believe that I wrote a letter. I think that would have been counterproductive, but I did not do anything to try to harm his being appointed to the bench and, as I best recall, when the announcement was made, if I was not the first person, I was one of the——

Senator LIEBERMAN. Understood.

Mr. MCCRARY [continuing]. First people to call him and congratulate him.

Senator LIEBERMAN. So, you did not call any political people in south Florida to support his nomination, to the best of your recollection?

Mr. MCCRARY. Oh, no, sir. Senator, you know, I was trying to help myself.

Senator LIEBERMAN. I understand. I understand. OK.

Mr. McCrary. I mean, I like Alcee; I like the judge, but you know, charity begins at home.

Senator Lieberman. OK. Understood. And your sense of it was that he had the inside shot at this, the greater probability of getting it, in part—as I recall, he was a State judge at that time and——

Mr. McCrary. I think one of the factors that weighed in his favor, Senator, was that he was a sitting judge at the time.

Senator Lieberman. Right. He was also more politically active, you said, and that may have been a plus for him?

Mr. McCrary. I think it also was a plus for him. He had run for public office on four or five occasions and had wide name recognition and had a following.

Senator Lieberman. To the best of your knowledge, did your mutual friend William Borders play a role in Judge Hastings' nomination to the Federal bench?

Mr. McCrary. Senator, I believe so, and let me tell you why I come to that conclusion. I don't have any independent knowledge of it, but I will tell you why I come to that conclusion. At Judge Hastings' investiture, Mr. Borders—I believe that Mr. Borders spoke as one of the people who did some accolades to the President and to the new appointee. And while I don't know specifically what he did, it is almost inconceivable to me that Bill Borders did not try at least, if not with the President, with the Attorney General or some people that he might have known in this city supporting Judge Hastings' quest for the Federal bench.

Senator Lieberman. The general impression was, I gather, that Mr. Borders did have access to the White House and to the Attorney General during the Carter administration.

Mr. McCrary. In addition to the fact, Senator, he was President of the National Bar Association, and it is my understanding—and I think I am correct—that the Judiciary Committee traditionally has sought out opinions from the American Bar Association about the fitness of candidates and by, if not agreement, there had been some working relationship between the National Bar Association and the American Bar Association, so I am sure that, in his role as President or a very influential member of the National Bar Association, I'm fairly comfortable that he made some overtures to the Judiciary Committee or to the Attorney General.

Senator Lieberman. OK. I appreciate your answers to that. Let me just try to clarify two other lines of questioning that other members of the committee have asked because, obviously, we've spent so much time with you because you were there at some very important parts of this story, and we are trying hard to put the pieces together.

You've testified that Judge Hastings did speak to you sometime early in 1981 about the fact that Hemphill Pride's family was going through a hard time. This was during the period when he was incarcerated and, as a result of that, you sent $100 to Mrs. Pride. Is that correct?

Mr. McCrary. Senator, I don't know whether it was 1981. I do know that Mr. Pride was incarcerated——

Senator Lieberman. He was incarcerated. OK. And just to clarify, after he left jail, Mr. Pride left jail, you have a vague recollection that Judge Hastings at some point may have indicated to you that he was going to write a letter to the chief judge of the South Carolina Supreme Court. But never again, if I hear you correctly, did he ask you to write a check to Mr. Pride or write a letter on Mr. Pride's behalf, is that correct?

Mr. McCRARY. Never.

Senator LIEBERMAN. Only that one occasion when Mr. Pride was still incarcerated?

Mr. McCRARY. That's correct, sir.

Senator LIEBERMAN. OK. Second, on this night of September 12th, when Mr. Borders arrived at the hotel and you were gathered there, obviously we're all wondering how he knew where to go, and you testified in response to Senator Rudman that, to the best of your recollection, Mr. Borders did not know that you were going to be in Washington at that time. Is that correct?

Mr. McCRARY. To the best of my recollection, that's correct, sir.

Senator LIEBERMAN. Now, I believe you indicated that you had told your daughter and her friend Donna Mendez that you were going to be in Washington?

Mr. McCRARY. That's correct, sir.

Senator LIEBERMAN. Is there anyone else that you might have told you were going to be in Washington who was also a friend of William Borders who might have told him?

Mr. McCRARY. Senator, let me bring up a matter that was not mentioned, and I don't recall whether I told him. I do recall, on the afternoon I made a call to Jimmy Cobb.

Senator LIEBERMAN. The afternoon of September 12th, that would have been?

Mr. McCRARY. Yes, sir, Jimmy Cobb, who was Mr. Borders' partner——

Senator LIEBERMAN. Right.

Mr. McCRARY [continuing]. Because after I saw my daughter, I thought I would go by and see Jimmy, and his wife told me that their son—that Jimmy was not at home——

Senator LIEBERMAN. He was a friend of yours also, Mr. Cobb?

Mr. McCRARY. Jimmy Cobb was a friend of mine also—and that little Jimmy, meaning their son, Jimmy, Jr., had broken his leg, but that Jimmy, Sr. was not at home. Now, I don't recall whether I talked to Jimmy Cobb, Sr. about my being in Washington or not. I do not recall. I do know that I called him while I was in Washington.

Senator LIEBERMAN. You called the home, not the office?

Mr. McCRARY. I called the home. This was on a Saturday, and I called the home, sir.

Senator LIEBERMAN. OK. Mr. Cobb was a partner of Mr. Borders?

Mr. McCRARY. They were in the same office and I do believe they were partners.

Senator LIEBERMAN. OK. But you never hooked up with Mr. Cobb that day?

Mr. McCRARY. No, sir, I did not.

Senator LIEBERMAN. On the phone or in person?

Mr. McCRARY. No, sir, I did not.

Senator LIEBERMAN. And I presume you indicated to Mrs. Cobb that you were in Washington?

Mr. McCrary. Yes, I did.

Senator Lieberman. Do you remember whether you told her you were staying at the Sheraton?

Mr. McCrary. Senator, I don't recall. I seem to recall that I might have said to her, "When he gets in, tell him to call me or I will call him back."

Senator Lieberman. Right.

Mr. McCrary. I have no independent recollection, but that's the kind of message I think I would leave, you know, particularly given the fact that his son was lying up in bed with a broken leg and I probably wanted to say how's your son.

Senator Lieberman. Right. You don't know, I assume, whether Mr. Cobb and Mr. Borders spoke on that day of September 12th?

Mr. McCrary. No, sir, I have no knowledge of that.

Senator Lieberman. Was it your habit to stay at the Sheraton whenever you came to Washington, or did you move around to different hotels?

Mr. McCrary. No, sir, almost every time I came to Washington I stayed at the Sheraton, for the fact that my daughter—it was closer for my daughter to be—in fact, I had just been in Washington in June for her graduation for about four days and stayed at the Sheraton, and before I had always stayed at the Sheraton.

Senator Lieberman. So, that pattern of yours of staying at the Sheraton is something that both Mr. Cobb and Mr. Borders would have been aware of?

Mr. McCrary. That's a fair statement, Senator. It's the only hotel that I stay in when I would come to town, sir.

Senator Lieberman. Okay. I appreciate that. Let me just ask you generally about 1981. We've talked a lot about the National Bar Association. I think at one point you indicated that, in response to Senator Specter's questioning about the calls on June 3rd, that around that time you were going to be the speaker at a plenary session of the National Bar Association, is that right?

Mr. McCrary. Yes, sir.

Senator Lieberman. Were you generally involved in the activities of the National Bar Association that year, 1981, committee activities and the like?

Mr. McCrary. Yes, sir.

Senator Lieberman. And is it fair to say that Mr. Borders was also generally involved in the activities of the National Bar Association in 1981?

Mr. McCrary. Yes, sir, he was the President.

Senator Lieberman. That was the year he was President?

Mr. McCrary. That was the year he was President.

Senator Lieberman. And how would you describe Judge Hastings' involvement in the activities of the National Bar Association that year?

Mr. McCrary. I would have to say that he was active—let me just tell you, the activities that I was active in were not the same activities Judge Hastings would have been active in, because the National Bar is divided into two sections, notwithstanding all are members. There is one part that is called the Judicial Council, where at the convention the judges meet separate from the lawyers, except for some plenary sessions.

Senator LIEBERMAN. Right.

Mr. MCCRARY. So, at the convention, the lawyers conduct their seminars one place and judges conduct their's another, but there is a coming together at the general sessions and obviously at the closing night ceremony.

Senator LIEBERMAN. So, to the best of your knowledge in 1981, was Judge Hastings actively involved in the Judicial Council section of the NBA?

Mr. MCCRARY. To the best of my knowledge, he was, sir.

Senator LIEBERMAN. And would it have been, as part of that involvement, would it have been logical or normal for Judge Hastings to have regular contact with Mr. Borders, who was President that year, or would that not have been necessary?

Mr. MCCRARY. It might not have been necessary, Senator, but as the organization is structured, the President of the National Bar is, for the want of a better word, an ex-officio member of all boards and committees within both organizations, so I would imagine that they were active with each other, as any other judge might have been during that same time.

Senator LIEBERMAN. OK. Just one final question. Taking you up to 1985, that MMAP conference, you sat next to Judge Hastings at the table. You introduced him, I recall.

Mr. MCCRARY. Yes, sir.

Senator LIEBERMAN. Did you see—when was the first time you saw him that morning, can you recollect?

Mr. MCCRARY. I believe the first time I saw him was when I went on the stage. I believe he was already there. As I remember the MMAP conference, there was a session that started about 7:30 or 8:00, and I'm not sure, but the session where Judge Hastings spoke was not the first session of the conference——

Senator LIEBERMAN. Understood.

Mr. MCCRARY [continuing]. And I did not attend the first session. I came like 20 minutes before the scheduled time.

Senator LIEBERMAN. So, the first time you saw him was up on that head table or podium before you introduced him?

Mr. MCCRARY. Yes, sir.

Senator LIEBERMAN. You didn't see him before that anywhere else in the hotel?

Mr. MCCRARY. If I saw him, I saw him at a distance. I don't recall——

Senator LIEBERMAN. I understood. You didn't have any conversation with him or see him with anybody else that morning?

Mr. MCCRARY. No, sir.

Senator LIEBERMAN. Thank you, Mr. McCrary.

Thank you, Mr. Chairman.

The CHAIRMAN. Representative Bryant?

Mr. BRYANT. May we be excused to go and vote?

The CHAIRMAN. Yes, you may. Let me just ask the committee, are there other questions of this witness? Do we need to keep this witness over this recess?

[No response.]

Is there any reason this witness cannot be excused?

[No response.]

If not, Mr. McCrary, you are excused. We very much appreciate your testimony.

We will recess until the House can return. I believe the Senate also has a vote here imminently and we can vote and quickly return as well and hopefully get another half hour of work in.

[Short recess.]

The CHAIRMAN. The committee will come to order again.

We will pause here for a few moments. We thought we had seven Senators here and we seem to have six at this point, so why don't we go back into recess for just a few minutes.

[Short recess.]

The CHAIRMAN. The committee will come back to order.

We have a very few minutes before our scheduled recess. Would the Respondent's counsel please call the next witness?

Mr. ANDERSON. Respondent calls Eleanor Golar-Williams.

The CHAIRMAN. Would you raise your right hand, please?

Do you, Eleanor Golar-Williams, swear and affirm that the evidence you shall give in the case now pending between the United States and Judge Alcee L. Hastings shall be the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. WILLIAMS. I do.

The CHAIRMAN. Please be seated.

TESTIMONY OF ELEANOR GOLAR-WILLIAMS

DIRECT EXAMINATION

Mr. ANDERSON. Ms. Williams, if you would lean into the microphone, apparently that is necessary.

Would you state your full name for the committee, please?

Ms. WILLIAMS. My name is Eleanor Golar-Williams.

Mr. ANDERSON. And are you presently employed?

Ms. WILLIAMS. I am retired professor emerita from the University of South Carolina, in Columbia, South Carolina.

Mr. ANDERSON. When did you retire?

Ms. WILLIAMS. Two-and-a-half years ago, December 1986.

Mr. ANDERSON. Are you related to Patricia Williams?

Ms. WILLIAMS. Yes, I am her mother-in-law.

Mr. ANDERSON. And do you know Myesha Williams?

Ms. WILLIAMS. That's my granddaughter.

Mr. ANDERSON. Directing your attention back to 1981 and before, were you in regular telephone contact with your granddaughter and your former daughter-in-law?

Ms. WILLIAMS. Yes, since way before that.

Mr. ANDERSON. Would you tell the committee what the family practice was in terms of your granddaughter or your daughter-in-law calling you, how that worked?

Ms. WILLIAMS. Yes. We talk often, that's the way we visit, because of the distance. Usually, if there's a call from Miami or Florida, my granddaughter will call me—she's been calling me since she was three years old, dialing herself. When I call, I speak to both my daughter-in-law and my granddaughter.

Mr. ANDERSON. And was it——

Ms. WILLIAMS. This conversation about family, family affairs.

Mr. **Anderson**. To your knowledge, was your granddaughter encouraged to call you directly and dial?

Ms. **Williams**. Oh, yes, since she was three.

Mr. **Anderson**. And during 1981, did that practice continue?

Ms. **Williams**. Yes.

Mr. **Anderson**. Over the course of a year, in terms of the call you receive from Miami, would most of them have been directly from—whose voice would be on the other end of the phone, if you got a call from Miami?

Ms. **Williams**. Hi, grandma—my granddaughter.

Mr. **Anderson**. And do you recall, did Ms. Williams herself call you directly, as opposed to having Myesha call you?

Ms. **Williams**. No, not usually, on few occasions, because Myesha could do it herself. There was no need for Mrs. Williams to call me.

Mr. **Anderson**. In 1981, did you know Judge Alcee Hastings? Had you met him?

Ms. **Williams**. No.

Mr. **Anderson**. Had you spoken with him on the phone?

Ms. **Williams**. No.

Mr. **Anderson**. Are you and your former daughter-in-law still close friends?

Ms. **Williams**. Yes.

Mr. **Anderson**. I take it you and your granddaughter are still close friends?

Ms. **Williams**. Definitely.

Mr. **Anderson**. Ms. Williams, thank you very much. I have no further questions.

The **Chairman**. Is there cross examination of the witness?

CROSS EXAMINATION

Mr. **Fish**. Yes, Mr. Chairman.

Ms. Golar-Williams, my name is Hamilton Fish, Jr., Congressman from New York.

Ms. **Williams**. Yes, I met you last week.

Mr. **Fish**. And we met last week, yes.

Ms. **Williams**. Yes.

Mr. **Fish**. The matter of keeping in touch with your family by telephone, isn't it true that many of the telephone calls that you've had have been with Ms. Williams directly and not just with your granddaughter?

Ms. **Williams**. No, sir.

Mr. **Fish**. Ms. Golar-Williams, isn't it true that you testified before the Eleventh Circuit Investigating Committee in Atlanta, GA—and I am reading from page 8 of your testimony as follows: "When my daughter-in-law calls or my granddaughter calls, no matter where it's from, we do hold conversations, this is the way we visit most of the time."

Ms. **Williams**. Yes. That does not mean that my daughter-in-law made the call.

Mr. **Fish**. You are not now changing your testimony, the fact that you spoke to both your granddaughter and Ms. Williams on the——

Ms. WILLIAMS. Right. I think I also said in that testimony that, at that particular time, I was told that the phone call was made on August 2nd, I believe—I think your counsel told me this, and I said the conversation may have been about arranging for my granddaughter to visit me. At the time I would not be teaching in the summer session and I would be free to have her come to Columbia. That was conversation between not only my granddaughter, but also my daughter-in-law.

Mr. FISH. Right.

Ms. WILLIAMS. Still family affair.

Mr. FISH. That's my understanding, too. Thank you.

Now, Ms. Golar-Williams, my understanding is that in 1981, your home telephone number in Columbia, South Carolina was 803-782-9387, is that correct?

Ms. WILLIAMS. That's correct, after my being recalled that number, after all of those years.

Mr. FISH. And that was your telephone number when you were living at the Regency Square West Apartments in Columbia, South Carolina, isn't that correct?

Ms. WILLIAMS. Yes.

Mr. FISH. Thank you.

Ms. Golar-Williams, when did that number, 782-9387, become your home phone number?

Ms. WILLIAMS. Oh, whenever I moved there.

Mr. FISH. Do you recall the year?

Ms. WILLIAMS. In the seventies, in the seventies.

Mr. FISH. You can't be more specific than that?

Ms. WILLIAMS. Let's see, I went to Columbia in 1972.

Mr. FISH. And this is the Regency.

Ms. WILLIAMS. That's the Regency Square, because I lived in a sister apartment to that right next door first, and I was there about two or three years—this is rough—and then I moved into the Regency Square, so 1976, maybe, somewhere in there.

Mr. FISH. That number I referred to, 782-9387, became your home phone number approximately 1976.

Ms. WILLIAMS. I think so.

Mr. FISH. Thank you. Therefore, if we take the period 1976 up until early 1983, a period of seven years, and this is the time, 1983, of course, the time of Judge Hastings' criminal trial. For seven years, Ms. Williams called you at that number when she telephoned you at home, isn't that correct, from 1976 to 1983?

Ms. WILLIAMS. Would you restate that, that she called me when what?

Mr. FISH. During the period of 1976 to 1983, a period of seven years, when Ms. Williams would call you at home to talk about anything, that was the number that she would use, right?

Ms. WILLIAMS. Well, I'm saying that my granddaughter called me more than my daughter-in-law, even in 1976.

Mr. FISH. Yes. And——

Ms. WILLIAMS. You see, my daughter—my granddaughter in 1976 would have been about five years old.

Mr. FISH. We understand that.

Ms. WILLIAMS. She has been calling me since she was three.

Mr. Fish. But what I am asking you is whether that number was the number that Ms. Williams and your granddaughter would use to phone you at home from 1976 to 1983.

Ms. Williams. Yes, where we talked——

Mr. Fish. There is no different number?

Ms. Williams. No different number, no.

Mr. Fish. Now, I will represent to you, Ms. Golar-Williams, based on evidence already accepted into the record by this committee, that from at least January 1979 through December 1982, there were 14 calls from Patricia Williams' residence to your home in Columbia, South Carolina.

Ms. Williams. Yes.

Mr. Fish. Does that comport with your memory of the number of times Patricia Williams or your granddaughter called you at home during the four years preceding Judge Hastings' criminal trial?

Ms. Williams. Mr. Fish, I can't say that it was 14 or 100, I cannot recall that.

Mr. Fish. That's fine.

Thank you. No further questions, Mr. Chairman.

The **Chairman.** Are there any other questions on direct examination?

Mr. Anderson. No, Mr. Chairman.

The **Chairman.** Are there any questions from the committee to this witness?

[No response.]

If not, is there any reason this witness cannot be excused?

[No response.]

You are excused, Ms. Golar-Williams. Thank you very much for testifying. We appreciate it.

Ms. Williams. Thank you, Mr. Chairman.

The **Chairman.** Let me ask, before we recess as we are scheduled to at this hour, if I could ask Mr. Anderson what his expectation is tomorrow as far as which witnesses he would call and in what order.

Mr. Anderson. Mr. Chairman, I would be happy to.

We are going to release Ms. McIver, because we don't feel that it is fair to hold her over another night, and I don't think it is that crucial.

We expect to call Judge Henry Latimer—we are trying to get our Florida witnesses out tomorrow—Judge Henry Latimer, Judge Henry Rogers, Shirley Pride, Judge Matthew Perry, Betty Williams, and Marilyn Carter. At some point, we wish to put Pearl Dabreau Mapp on, it depends on how the committee's schedule is running with votes. She has been here several times but she is in Washington.

We have on standby, should things go as fast as they did on Monday, Kenneth Robinson and Roger Spaeder, who have said if they are in their offices and available, they could come down here in about 15 minutes. We hadn't planned to get to them until next week, but I have been able to verify with Mr. Robinson that he could be available late tomorrow afternoon if we got that far. I haven't spoken today to Mr. Spaeder to find out what tomorrow's plans are.

But as things now stand, it would be Judge Latimer, Judge Rogers, Shirley Pride, Judge Perry, Betty Williams, Marilyn Carter, and we would put Pearl Dabreau Mapp in whenever there is either a lull, because of people's travel plans or something like that. Those are my present plans, Mr. Chairman.

The CHAIRMAN. We appreciate that.

Representative Bryant?

Mr. BRYANT. Mr. Chairman, counsel for the Respondent included in the reading of his list there the name of Marilyn Carter. She has not appeared in the past on the Respondent's witness list and, accordingly, we would raise an objection to her being called, absent some kind of showing——

The CHAIRMAN. Who is Marilyn Carter?

Mr. ANDERSON. Mr. Chairman, if the committee doesn't want to hear from Ms. Carter, probably that would be fine with us. Her name has come across as Deputy Courtroom Clerk who sent out the special delivery envelope. We asked her to come up on the theory that someone might want to discuss that and the judge's court calendars during the course of the year. We are trying to do this as part of—we have, for the moment, at least, bought into the notion to search for truth. If the House objects, I would be happy to send her back to Florida and I know that she will be—she is the only member of the judge's staff who has made it eight years without having to testify since the grand jury and she would like to keep that perfect record intact. I am not pushing this witness on the committee. I am trying to get people up whose names I have heard, with some expressions of interest, and if the House objects and the committee so rules, we will send her back now.

The CHAIRMAN. Representative Bryant, is there a reason why she should not be called, other than the fact that you have not been previously advised that she might be?

Mr. BRYANT. Mr. Chairman, that's the only reason, but, you know, constantly shifting ground of the Respondent is clearly a difficulty for us. We have never before been told that they had any intention of calling her. She is an obvious witness to call, if they wanted to. This is not the news that she happens to hold that job in the judge's courtroom, is certainly not something new to them. We just would ask that the rules of this committee that we have abided by be enforced.

Mr. ANDERSON. Mr. Chairman, may I respond? This comes close to attacking me personally. Any respondent in a case is going to have to be flexible to see the prosecution's evidence. Marilyn Carter and special delivery envelopes have become an issue. We are prepared to attend to her, but it is not something that I knew exactly everything that was in their bag of tricks.

The CHAIRMAN. If counsel will desist, I see she is listed on the list of witnesses that we have as No. 41 and was, as of the 24th, in the list that we had, so I do not see that it prejudices the House if she is called.

Mr. BRYANT. We have never seen a witness list with her name on it.

Mr. ANDERSON. Mr. Chairman, could Mr. Bryant and I approach the bench and you could show him the document you're looking at?

Mr. Bryant. I don't doubt that you have it. I am just saying we have not been informed of it.

Mr. Anderson. They have the same document, Your Honor. It was served on you the same time it was served on the committee.

The **Chairman.** She's on the list that the committee has been working from here and I would not at this point see a prejudice. If the House wishes to renew an objection tomorrow at the time she's called, they can do so, otherwise we would expect to permit her to testify on the basis that she is on the list of prospective witnesses.

Mr. Bryant. Well, might it be possible for us to at least have a little time to gather our witness with regard to this new addition? We did not know she was coming and, if there is no prejudice, why not put her off until Monday, Friday or Monday, and at least let us see where we stand.

The **Chairman.** I gather she is here. If counsel could make her available to the House managers this evening or early tomorrow or to the House managers' counsel for them to visit with her, I think that would be helpful.

Mr. Anderson. I need to visit with her this evening, I think probably over the lunch hour. We have put her down as our last witness of tomorrow.

The **Chairman.** So, she would not be called at least until tomorrow afternoon——

Mr. Anderson. Afternoon, and, depending on the pace, it may be that Monday will be when we will hear from her.

The **Chairman.** Surely, sometime between now and tomorrow afternoon, there could be a chance to enter your—why don't we go forward? I understand from House managers that the Judiciary Committee on the House side has an important markup starting at 8:00 tomorrow, and for that reason it will be very difficult for the House managers to be here at 9 o'clock when we had scheduled to begin taking testimony.

In light of that, we will put off the taking of that testimony and try to begin as quickly as we can, around 9:30, if House managers can try to return by that time or have at least—I don't know if all of them would be able to, but if—we will try to start testimony at that time.

I would ask the committee to try to meet here at 9:00 to deliberate in closed session on several matters that we still need to decide with regard to witnesses we're calling.

Senator Rudman?

Senator **Rudman.** Mr. Chairman, is there any chance that we may have an extraordinary late session tomorrow here in the committee?

The **Chairman.** You mean an extraordinary session of this committee or an extraordinarily late session of the Senate?

Senator **Rudman.** Make it either way, Mr. Chairman.

The **Chairman.** Well, I think there is a real possibility we will have a late session of the Senate and we are investigating the possibility of us having a later session of the committee.

Senator **Rudman.** The reason I ask the question is I know there has been some talk in the committee about that and, in fairness to counsel, if we're thinking that way, I think perhaps we ought to at least indicate to them that we are considering, particularly in light of the late starting time of the House, and since the Senate will be in late and voting tomorrow night anyway, that we might have maybe two hours in the evening. I know the Chairman and the Vice Chairman are considering that. Certainly, I think it would be good, if the Chairman and Vice Chairman are thinking that way, that we ask counsel now if that's going to present a problem to them, because I would like to make some plans also, Mr. Chairman.

The CHAIRMAN. Is there a major problem if we were to determine to go from 7:00 to 9:00 tomorrow evening, in addition to the regular scheduled time? We would recess at 5:30 and start again at 7:00. Does that cause major difficulties to either side?

Mr. ANDERSON. Mr. Chairman, let me address it first. I understand and share the Senators' desire to get back to my home before August 4th as much as possible, and I am trying to cooperate. I think we moved fairly rapidly through our witnesses and have taken some cautionary remarks about trying to get crisply to the point, and I also understand the House used less than its allotted time or its anticipated time, but it took ten and a half or ten and three-quarters days to get through the House. We are now in day three of the Respondent.

If we are firm that Friday is a day off, the evening session on Thursday would not cut unduly into our preparation time. I will tell you now, though, the list of witnesses that I called you, what you see is what you got. I don't have anyone else on backup and other people who are flying in would not be here until Monday, so we would be happy to work with you to help all of the witnesses I listed, especially the ones from Florida, to be able to go home for the weekend and a night session on Thursday would not do it. Please remember that Respondent has his half and it is already only eight and a quarter days and we would like——

The CHAIRMAN. Well, let me advise, so that there is no confusion, we will not be in session Friday, that is determined and that is not still an open issue.

Representative Bryant, did you have a position on whether it would be unrealistic to go forward for an additional 2 hours tomorrow night?

Mr. BRYANT. Mr. Chairman, if the witnesses are Latimer, Rogers, Pride, Perry, Williams, Carter, Robinson, and Spaeder——

Mr. ANDERSON. And Pearl Dabreau Mapp is in there somewhere.

Mr. BRYANT. If it's those witnesses and no others, we will be happy to stay tomorrow night.

The CHAIRMAN. Why don't we plan, then, to continue tomorrow until 5:30. We will begin testimony at—the committee will meet at 9:00 to deliberate in closed session, we will begin testimony as shortly after 9:30 as we possibly can, as soon as the House Managers can get here, and we will continue until 5:30. We will recess then until 7:00 and go again at 7:00, if all of those witnesses that have been named have not yet had a chance to testify.

Senator BRYAN. Mr. Chairman?

The CHAIRMAN. Yes, Senator Bryan.

Senator BRYAN. It might be helpful to have our counsel visit with the House managers and counsel for the Respondent to make sure that the list of witnesses which Representative Bryant has received is the same list that the Chairman has received. Apparently, there is some confusion, the representation having been made to us previously that the name of the witness that Professor Anderson is calling is not on that list, and you've indicated it is on our list as of the 24th. Let's make sure we are playing——

The **Chairman**. I agree, that's an excellent suggestion.

Mr. **Anderson**. Mr. Chairman, I would like that done and the acknowledgement made in open committee. Those coins of comments—and I understand the flow of paper around here can get confusing, but they do tend to be attacks on my integrity. Whatever the true state of affairs is, I think the committee ought to take that acknowledgement in open session and not just leave that issue hanging, is Professor Anderson shuffling the deck here.

Senator **Bryan**. Mr. Chairman, I offer no condemnation or aspiration on either side. I am just trying to expedite this thing so we don't get into a protracted discussion of whether the witness is on the list or not on the list.

The **Chairman**. I believe that can be handled by counsel.

Is there anything else we need to do while the full committee is here?

[No response.]

If not, we will stand in recess until 9:30 in open session tomorrow, 9:00 o'clock for a closed session of the committee.

[Whereupon, at 5:44 p.m., the committee was adjourned, to reconvene on Thursday, July 27, 1989, at 9:00 a.m.]